रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 27] नई दिल्ली, जून 29—जुलाई 5, 2014, शनिवार/आषाढ़ 8—आषाढ़ 14, 1936
No. 27] NEW DELHI, JUNE 29—JULY 5, 2014, SATURDAY/ASADHA 8—ASADHA 14, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

गृह मंत्रालय

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1871.—राष्ट्रपति, संविधान के अनुच्छेद 299 के खंड (1) के उपबंधों के अनुसरण में निदेशक, राष्ट्रीय आसूचना ग्रिड में सम्पत्ति की संविदाओं और आश्वासनों को निष्पादित करने के लिए, एतद्द्वारा प्राधिकृत करते हैं ।

[फा. सं. 22011/1/2013-लीगल/608]
राकेश सिंह, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

New Delhi, the 3rd July, 2014

S.O. 1871.—In pursuance of the provisions of clause (1) of article 299 of the Constitution, the President hereby authorizes the Director, National Intelligence Grid to execute contracts and assurances of property in the National Intelligence Grid on behalf of the President.

[F. No. 22011/1/2013-Legal/608]

RAKESH SINGH, Jt. Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 27 जून, 2014

का.आ. 1872.—दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय और कार्मिक एवं प्रशिक्षण विभाग के दिनांक 24.07.2013 के पत्र सं. 228/38/2013-एवीडी II, के तहत भारत के राजपत्र के भाग II, खंड (ii) में प्रकाशित अधिसूचना के क्रम में, केन्द्रीय सरकार एतद्द्वारा केरल राज्य सरकार, गृह विभाग (एम), तिरुवनंतपुरम की सहमति से दिनांक 28 अप्रैल, 2014 की अधिसूचना जी.ओ. (एमएस) सं. 81/2014/गृह द्वारा दोषी अजीब ए.पी., सिविल पुलिस अधिकारी, राजु मथेव, सशस्त्र उप पुलिस निरीक्षक तथा प्रशांत कुमार, सिविल पुलिस अधिकारी और अन्य के विरूद्ध अपराध निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) के तहत पुलिस स्टेशन नेदुमबसेरी, तिरुवनंतपुरम (केरल) के अपराध अन्वेषण सं. 1568/12/आरसी. 6(एस)/2013/सीबीआई/ एससीबी/टीवीपीएम) से सामने आने वाले तथा उपर्युक्त अपराधों से संबंधित प्रयास, दुष्प्रेरण एवं षडयंत्र के

अन्वेषण के संबंध में दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और अधिकार क्षेत्र का विस्तार संपूर्ण केरल राज्य पर करती है।

[सं. 228/38/2013-एवीडी-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 27th June, 2014

S.O. 1872.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), and in continuation of the Notification published with the Gazette of India in part II section (ii), Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training No. 228/38/2013-AVD-II dated 24.7.2013, the Central Government with the consent of the State Government of Kerala, Home (M) Department, Thiruvananthapuram vide Notification G.O. (Ms.) No. 81/2014/Home dated 28th April, 2014, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Kerala for investigation relating to the offences of criminal conspiracy, bribery and criminal misconduct under the Prevention of Corruption Act, 1988 (Act No. 49 of 1988) against accused Ajeeb A. P., Civil Police Officer, Raju Mathew, Armed Sub.Inspector of Police and Prasanth Kumar, Civil Police Officer and others arising out during investigation of Crime (Nos. 1568/12 RC. 6(S)/2013/CBI/SCB/TVPM) of Nedumbassery Police Station, Thiruvananthapuram (Kerala) and attempts, abetments and conspiracies in relation to the above mentioned offences.

[No. 228/38/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 30 जून, 2014

का.आ. 1873.—केंद्रीय सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए झारखण्ड राज्य सरकार, गृह विभाग, रांची के दिनांक 4 जुलाई, 2013 की अधिसूचना सं. 6/सी.बी.I-613/2813 द्वारा प्राप्त सहमति से देवधर जिला (झारखण्ड) में श्री संजय सिंह की पुत्री चांदनी कुमारी (आयु 13 वर्ष) और श्री रामानुज सिंह की पुत्री अर्पिता कुमारी (आयु 14 वर्ष) से बलात्कार और इसके पश्चात् हत्या करने के संबंध में तथा उपर्युक्त अपराध के संबंध में प्रयास, दुष्प्रेरण और षड्यंत्र किए जाने के संबंध में पुलिस स्टेशन जसीडीह (झारखण्ड) में दर्ज भारतीय दण्ड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 34, 201 एवं 302 के तहत तथा भारतीय दण्ड संहिता 1860 (1860 का अधिनियम सं. 45) की शामिल की धारा 376-डी के तहत केस नं. 124/2013 दिनांक 27.05.2013 की जांच हेतु दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और न्यायाधिकार क्षेत्र का विस्तार संपूर्ण झारखण्ड राज्य पर करती है।

[सं. 228/49/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 30th June, 2014

S.O. 1873.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Jharkhand, Home Department, Ranchi vide Notification No. 6/C.B.I.-613/2013-2813 dated 4th July, 2013, hereby extends the powers and Jurisdiction of the Delhi Special Police Establishment to the whole of the State of Jharkhand for investigation of Case No. 124/2013 dated 27.05.2013 under section 34, 201 and 302 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and added section 376-D of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Jasidih (Jharkhand) relating to rape and after that, murder of Chandani Kumari (Age 13 years) daughter of Sh. Sanjay Singh and Arpita Kumari (Age 14 years) daughter of Sh. Ramanuj Singh in Deoghar District (Jharkhand) and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offence.

[No. 228/49/2013-AVD-II]

RAJIV JAIN, Under Secy.

कार्यालय प्रधान मुख्य आयकर आयुक्त, राजस्थान

जयपुर, 8 मई, 2014

सं. 01/2014-15

का.आ. 1874.—आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उप-धारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्द्वारा निर्धारण वर्ष 2014-15 एवं आगे के लिये कथित धारा के उद्देश्य से महारानी गायत्री देवी गर्ल्स पब्लिक स्कूल सोसायटी अजमेरीगेट, जयपुर को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखंड (23 सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: प्रमुआआ/आअ/(तक.)/10(23 सी)(vi)/2014-15/718]

अतुलेश जिंदल, प्रधान मुख्य आयकर आयुक्त

OFFICE OF THE PR. CHIEF COMMISSIONER OF INCOME TAX, RAJASTHAN

Jaipur, the 8th May, 2014

No. 1/2014-15

S.O. 1874.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-

tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules 1962, the Chief Commissioner of Income-tax, Jaipur hereby approves "Maharani Gayatri Devi Girls' Public School Society, Ajmeri Gate, Jaipur" for the purpose of said section for the A.Y. 2013-14 onwards, provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962,

[No. PCCIT/JPR/ITO(Tech.)10(23C)(vi)2014-15/718]

ATULESH JINDAL, Pr. Chief Commissioner of Income-tax

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 19 जून, 2014

का.आ. 1875.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में दूरदर्शन महानिदेशालय, प्रसार भारती (सूचना और प्रसारण मंत्रालय) के अधीनस्थ कार्यालय, दूरदर्शन केन्द्र, हैदराबाद जिसके 80% से अधिक कर्मचारीवृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[सं. ई-11017/06/2012-हिंदी]

प्रियम्वदा, निदेशक (राजभाषा)

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 19th June, 2014

S.O. 1875.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies Doordarshan, Hyderabad under Directorate General, Doordarshan, Prasar Bharti (Ministry of Information and Broadcasting) more than 80% of the staff whereof have acquired the working knowledge of Hindi.

[No. E-11017/6/2012-Hindi]

PRIYAMVADA, Director (O.L.)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 27 जून, 2014

का.आ. 1876.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :--

क्र. सं.	लाइसेंस सं.	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा सं. भाग/अनुभाग) : वर्ष
(1)	(2)	(3)	(4)	(5)	(6)
1.	4735269	20140502	मैसर्स ब्लिंग एलिमेन्ट प्राईवेट लिमिटेड दरवाजा सं. 501, अवतार कॉम्पलैक्स, बिग बजार सड़क, कोयमबत्तूर–641001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी–शुद्धता एवं मुहरांकन	IS 1417 : 1999
2.	4735370	201400505	मैसर्स तन्गम्मन एक्वा फर्म्स एस एफ सं. 431/2B/D. No. 127/9A, पाल्करार तोट्टम मुख्य सड़क, तिरुमुरुगन पून्डी, तिरुप्पुर–641652	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
3.	4735774	20140506	मैसर्स ब्लिंग एलिमेन्ट प्राईवेट लिमिटेड दरवाजा सं. 501, अवतार कॉम्पलैक्स, बिग बजार सड़क, कोयमबत्तूर–641001	चांदी एवं चांदी मिश्रधातुएं, आभूषण/शिल्पकारी–शुद्धता एवं मुहरांकन	IS 2112 : 2003

(1)	(2)	(3)	(4)	(5)	(6)
4.	4740767	20140509	मैसर्स श्री बानु ज्वैलरी 41–A, एन जी आर रोड, पल्लडम, तिरुप्पुर–641664	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण / शिल्पकारी–शुद्धता एवं मुहरांकन	IS 1417 : 1999
5.	4739782	20140512	मैसर्स एस ए पी मिनरल्स एस एफ सं. 31 / 1B,करट्टुपालयम, पेरुन्तालुवु पोस्ट, तिरुप्पुर–641665	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
6.	4737172	20140512	मैसर्स श्री धनलक्ष्मी फौन्ड्री 27, दक्षिण सड़क सं. 3, अवारमपालयम, कोयम्बत्तूर–641006	निम्मजनीय पम्पसेट	IS 8034 : 2002
7.	4741264	20140520	मैसर्स लक्ष्मी वॉटर प्रोडक्ट्स 1 / 193ए बिलिची पोस्ट, पेरियामतमपालयम, कोयम्बत्तूर–641019	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
8.	4742367	20140522	मैसर्स बानु ज्वैलरी 41–A, एन जी आर रोड, पल्लडम, तिरुप्पुर–641664	चांदी एवं चांदी मिश्रधातुएं, आभूषण / शिल्पकारी–शुद्धता एवं मुहरांकन	IS 2112 : 2003
9.	4740565	20140519	मैसर्स पेन्निवन मिनरल्स एस एफ सं. 31 / 3, पल्लाकट्टु तोट्टम, करूर मुख्य सड़क, लक्कापुरम, ईरोड–638002	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
10.	4740969	20140519	मैसर्स प्रगिश एक्वा प्रोडक्ट्स सं. 275,1 / 711, शक्ति नगर पूर्व, पोयमपालयम, पी. एन.. रोड, पूलुवापट्टी पोस्ट, तिरुप्पुर–641602	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
11.	4742973	20140523	मैसर्स शिवाशक्ति मिनरल्स 256, वीरप्पम पालयम, बाई–पास रोड, विलरसमपट्टी, तिन्डाल पोस्ट, ईरोड जिला–638012	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
12.	4743167	20140525	मैसर्स जी. वी. एक्वा प्रोडक्ट्स एस एफ सं. 277 / 1B, केम्मारमपालयम गाँव, मेटूपालयम तालुक, कोयम्बत्तूर जिला–641113	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 14543 : 2004
13.	4744472	20140525	मैसर्स जयश्री प्लास्टिक्स 241–जी, पेरूर रोड, कुमरापालयम, कोयम्बत्तूर–641026	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	IS 15410 : 2003

[सं. सी एम डी/13:11]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 27th June, 2014

S.O. 1876.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule:—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
(1)	(2)	(3)	(4)	(5)	(6)
1.	4735269	20140502	M/s. Bling Element Private Limited Door No. 501, Avathar Complex, Big Bazaar Street, Coimbatore - 641 001.	Gold and Gold Alloys, Jewellery/ Artefacts - Fineness and Marking	IS 1417 : 1999
2.	4735370	201400505	M/s. Thangamman Aqua Firms SF. No.431/2B/ D.No.127/9A, Palkarar Thottam Main Road, Thirumurugan Poondi, Tiruppur - 641 652.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
3.	4735774	20140506	M/s. Bling Element Private Limited Door No. 501, Avathar Complex, Big Bazaar Street, Coimbatore - 641 001.	Silver and Silver Alloys, Jewellery/ Artefacts - Fineness and Marking	IS 2112 : 2003
4.	4740767	20140509	M/s. Sri Banu Jewellery, 41-A, N.G.R. Road, Palladam, Tiruppur - 641 664.	Gold and Gold Alloys, Jewellery/ Artefacts - Fineness and Marking	IS 1417 : 1999
5.	4739782	20140512	M/s. S.A.P Minerals SF. No .31/1B, Karattupalayam, Peruntholuvu (P.O.), Tiruppur - 641 665.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
6.	4737172	20140512	M/s. Shri Duraimani Foundrry 27, South Street No. 3, Avarampalayam, Coimbatore - 641 006.	Submersible Pumpsets	IS 8034:2002
7.	4741264	20140520	M/s. Lakshmi Water Products 1/193, Bilichi Post, Periyamathampalayam, Coimbatore - 641 019.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
8.	4742367	20140522	M/s. Sri Banu Jewellery, 41-A, N.G.R. Road, Palladam, Tiruppur - 641 664.	Silver and Silver Alloys, Jewellery/ Artefacts - Fineness and Marking	IS 2112:2003
9.	4740565	20140519	M/s. Penguin Mineralss SF. No. 31/3, Pallakattu Thottam, Karur Main Road, Lakkapuram, Erode District - 638 002.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004

(1)	(2)	(3)	(4)	(5)	(6)
10.	4740969	20140519	M/s. Pragish Aqua Products No. 275,1/711,Shakthi Nagar North, Poyampalayam, P.N.Road, Pooluvapatti(Post), Tiruppur - 641 602.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
11.	4742973	20140523	M/s. Saaisakthi Minerals 256,Veerappam Palayam, Bye-Pass Road, Villarasampatti, Thindal(P.O.), Erode District - 638 012.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
12.	4743167	20140525	M/s. G.V.Aqua Products SF. No. 277/1B, Kemmarampalayam Village, Mettupalayam (Tk), Coimbatore District - 641 113.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
13.	4744472	20140527	M/s. Jaishri Plastics 241-G, Perur Road, Kumarapalayam, Coimbatore - 641 026.	Containers for Packaging of Natural Mineral Water and Packaged Drinking Water	IS 15410:2003

[No. CMD/13:11]

M. SADASIVAM, Scientist 'F' & Head

नई दिल्ली, 27 जून, 2014

का.आ. 1877.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 5 के उपनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शाई गई तारीख से रद्द/स्थगित कर दिया गया है :--

अनुसूची

क्र. सं.	लाइसेंस सं. सी एम/एल–	लाइसेंसधारी का नाम व पता	स्थगित किए गए/रद्द किए गए लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
1.	65286678	मैसर्स ए. ए. एजेन्सीज 17, सावित्री नगर, रामनाथापुरम, कोयमबत्तूर–641045	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा), IS 14543:2004	09-05-2014

[सं. सी एम डी/13:13]

एम. सदाशिवम, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 27th June, 2014

S.O. 1877.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licence particulars of which are given below have been cancelled/ suspended with effect from the date indicated against each:—

SCHEDULE

Sl. No.	Licence No. CM/L-	Name & Address of the Licensee	Article/ Process with relevant Indian Standard covered by the licence cancelled/suspension	Date of Cancellation
1.	6528678	M/s. A. A. AGENCIES 17, SAVITHRI NAGAR, RAMANATHAPURAM, COIMBATORE - 641045	Packaged Drinking Water (other than Packaged Natural Mineral Water) – IS 14543:2004	09-05-2014

[No. CMD/13: 13]

M. SADASIVAM, Scientist 'F' & Head

नई दिल्ली, 28 जून, 2014

का.आ. 1878.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाईसेंस प्रदान किए गए हैं :--

क्र. सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01	2872168	02 अप्रैल, 2014	मैसर्स डायमंड टीएमटी एण्ड प्रोकोन प्राईवेट लिमिटेड सर्वे नं. 468–469, गांव सानोडर, तलाजा हाईवे, तालुका घोघा, जिला भावनगर, गुजरात–364050	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008
02	2872269	02 अप्रैल, 2014	मैसर्स शुभ प्लाय विनरस प्राईवेट लिमिटेड प्लॉट नं. 277, 1ली मंजिल, सैक्टर 1/अ, मामलतदार कार्यालय के पास, गांधीधाम, जिला कच्छ, गुजरात–370201	समुद्री उपयोग के लिए प्लाईवुड	710	0	0	2010
03	2872370	02 अप्रैल, 2014	मैसर्स परिश्रम सबमर्सिबिल पम्प सर्वे नं. 143, प्लॉट नं. 1, नहेरूनगर इन्डस्ट्रीज एरिया रिंग रोड, गोंडल बाय पास हाईवे, राजकोट, गुजरात–360002	निमज्जनीय पम्प सेट	8034	0	0	2002
04	2872471	03 अप्रैल, 2014	मैसर्स कृष्णा बैवरेजीस 43बी, मारुती इन्डस्ट्रीज एरिया, गोंडल रोड, आक्ट्रोय नाका, जिला राजकोट, गुजरात–360004	पैकेजब्द पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
05	2874172	08 अप्रैल, 2014	मैसर्स रवि प्लास्ट सरदार पटेल उद्योगनगर, प्लॉट नं. 17, बोरीया, तालुका जामकंडोरणा, जिला राजकोट, गुजरात–360405	कन्डैस फोर इलैक्ट्रीकल इन्स्टोलेसन : पार्ट 3 रीगींड प्लैन कन्डैटस ऑफ इन्सुलेटिंग मैटीरियल्स (सुपरसेडींग आए एस : 2509)	9537	3	0	1983
06	2875073	09 अप्रैल, 2014	मैसर्स अमर पॉलीफिल्स प्राईवेट लिमिटेड, सर्वे नं. 258/2, छाया, नेशनल हाईवे, एयरपोर्ट के पीछे,जिला पोरबंदर, गुजरात–360577	पॉलीप्रोपाइलीन रस्सी (3 लई वाली हॉसर तथा 8 लई वाली बटदार) – विशिष्ट	5175	0	0	1992

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
07	2875174	09 अप्रैल, 2014	मैसर्स शिवम इन्जीनियर्स सर्वे नं. 237, प्लॉट नं. 4/बी, विकास स्टव के पीछे, वेराबल,जिला राजकोट, गुजरात–360024	सिंचाई उपस्कर–मीडिया फिल्टर–विशिष्ट	14606	0	0	1998
08	2875376	10 अप्रैल, 2014	मैसर्स नुतन इन्जीनियरिंग जैस्मीन इन्जीनियरिंग के पीछे,शिव इन्डस्ट्रीयल एरिया, फाल्कन पम्प्स के पास, वावड़ी, जिला राजकोट, गुजरात–360001	निमज्जनीय पम्प सेट	8034	0	0	2002
09	2875477	10 अप्रैल, 2014	मैसर्स फ्लोरेक्स पम्प इन्डस्ट्रीज, 8/बी, नेशनल हाइवे, न्यु सरदार मार्केटिंग यार्ड के पास, सरदार टायर्स के पीछे, गोंडल, जिला, गुजरात–360311	निमज्जनीय पम्प सेट	8034	0	0	2002
10	2875578	10 अप्रैल, 2014	मैसर्स फ्लोरेक्स पम्प इन्डस्ट्रीज 8/बी, नेशनल हाइवे, न्यु सरदार मार्केटिंग यार्ड के पास, सरदार टायर्स के पीछे, गोडल, जिला, राजकोट गुजरात–360311	खुले कुंए के लिए निमज्जनीय पम्प सेट	14220	0	0	1994
11	2875982	11 अप्रैल, 2014	मैसर्स माधव पॉलीमर्स सर्वे नं. 215, प्लॉट नं. 3बी, दर्शन पार्क, सोसायटी के पास, मारुती ऑयल मिल के पीछे, एनएच 8बी, वेरावल (शापर), जिला राजकोट, गुजरात–360024	इमीटींग पाईप सिस्टम	13488	0	0	2008
12	2876782	16 अप्रैल, 2014	मैसर्स तिरुपति वायर कैब प्लॉट नं. 6, सर्वे नं. 60पी 1, तरंग इन्डस्ट्रीज एरिया, बाघेश्वर मंदिर के पीछे, नेशनल हाइवे 8बी, हडमताला, तालुका कोटडा सांगाणी, जिला राजकोट, गुजरात–360211	1100 वोल्ट तक की कार्यकारी वोल्टता के लिए पी वी सी रोधित केबल आई एस	694	0	0	1990
13	2876883	16 अप्रैल, 2014	मैसर्स फ्लोविन केबल्स सर्वे नं. 143, प्लॉट नं. 58, रेलवे ओवर ब्रिज के पास, ढेबर रोड, कोठरिया, जिला राजकोट, गुजरात–360002	1100 वोल्ट तक की कार्यकारी वोल्टता के लिए पी वी सी रोधित केबल आई एस	694	0	0	1990

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
14	2876984	16 अप्रैल, 2014	मैसर्स जय विजय कोर्पोरेशन सर्वे नं. 187, प्लॉट नं. 6अ, गुजरात, इन्ट्रक्स प्राईवेट लिमिटेड के पीछे, गॉव शापर, तालुका कोटडा सांगाणी, जिला राजकोट, गुजरात–360030	1100 वोल्ट तक की कार्यकारी वोल्टता के लिए पी वी सी रोधित केबल आई एस	694	0	0	1990
15	2877582	17 अप्रैल, 2014	मैसर्स कास्ट एण्ड ब्लोवर कंपनी गुजरात प्राईवेट लिमिटेड पी बी नं. 1009, त्रिशूल पम्प, आजी इण्डस्ट्रीयल एस्टेट, 80 फिट रोड, जिला राजकोट, गुजरात–360003	खुले कुंए के लिए निमज्जनीय पम्प सेट	14220	0	0	1994
16	2877683	21 अप्रैल, 2014	मैसर्स रेबैका लेमिनेटस 8A एन एच सोखाडी बस स्टॉप, तालुका मोरबी, बहादुरगढ़, जिला राजकोट, गुजरात–363642	सजावटी थर्मोसेटींग संश्लिष्ट रेजिनबद्ध परतदार चादरें– विशिष्ट	2046	0	0	1995
17	2879283	24 अप्रैल, 2014	मैसर्स एच एम प्लास्टिक गोकुल नगर 4, गोकुलधाम मेन रोड, गुजरात कास्टिंग स्ट्रीट, जिला राजकोट, गुजरात–364004	द्रवित पैट्रोलियम गैस (एलपीजी) सिलेन्डरों को छोड़कर संपीडित गैस सिलेन्डरों के लिए वाल्व फिटिंग–विशिष्ट	3224	0	0	2002
18	2879586	28 अप्रैल, 2014	मैसर्स राजेश्वर इन्डस्ट्रीज 3, गोकुलनगर, जैन प्लास्टिक के पीछे गोकुलधाम मेन रोड, जिला राजकोट, गुजरात–360004	निमज्जनीय पम्प सेट	8034	0	0	2002

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

सं चतुर्वेदी, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 28th June 2014

S.O. 1878.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grnat of licences particulats of which are given below in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01	2872168	02/04/2014	M/s. DIAMOND TMT & PROCON PVT. LTD. Survey No. 468-469, Village Sanodar, Talaja Highway, Taluka Ghogha, Distt : Bhavnagar, Gujarat-364050	Specification for high strength deformed steel bars and wires for Concrete reinforcement	1786	0	0	2008

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
02	2872269	02/04/2014	M/s. SHUBH PLY & VENEERS Pvt. Ltd. Plot No. 277, 1st floor, Sector 1/A, Near Mamlatdar office, Gandhidham, Distt : Kachchh, Gujarat-370201	Specification for Marine Plywood	710	0	0	2010
03	2872370	02/04/2014	M/s. PARISRAM SUB-MERSIBLE PUMP Survey No. 143, Plot No. 1, Near Nehrunagar Ind. Area, Ring Road, Gondal by pass Highway, Distt : Rajkot Gujarat-360002	Submersible Pumpsets-Specification	8034	0	0	2002
04	2872471	03/04/2014	M/s. KRISHNA BEVERAGES 43-B, Maruti Industrial Area, Gondal Road, Near Octroi Naka, Distt : Rajkot, Gujarat-360004	Packaged Drinking Water (other than Packaged Natural Mineral Water)-Specification	14543	0	0	2004
05	2874172	08/04/2014	M/s. RAVI PLAST Sardar Ptel Udyog Nagar, Plot No. 17, Boriya Taluka Jamkandorana, Distt : Rajkot, Gujarat-360405	Conduits of electrical installations : Part 3 Rigid plain conduits of insulting materials (superseding IS : 2509)	9537	3	0	1983
06	2875073	09/04/2014	M/s. AMAR PLOYFILS Pvt. Ltd. Survey No. 258/2, Chhaya, National Highway, Opp. Airport, Distt : Porbandar, Gujarat-360577	Polypropylene ropes (3-strand hawser-laid and 8-strand-plaited)-Specification	5175	0	0	1992
07	2875174	09/04/2014	M/s. SHIVAM ENGINEERS Survey No. 237, Plot No. 4/B, B/H Vikas Stove, Veraval, Distt : Rajkot, Gujarat-360024	Irrigation equipment-Media filter-Specification	14606	0	0	1998
08	2875376	10/04/2014	M/s. NUTAN ENGINEERING Opp, Jasmin Engineering, Shiv Ind Area, Near Falcon Pumps, Vavdi, Distt : Rajkot, Gujarat-360001	Submersible Pumpsets-Specification	8034	0	0	2002
09	2875477	10/04/2014	M/s. FLOREX PUMPS INDUSTRIES 8/B National Highway, Near New Sardar Marketing yard, Opp Sardar tyres, Gondal, Distt : Rajkot, Gujarat-360311	Submersible Pumpsets-Specification	8034	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
10	2875578	10/04/2014	M/s. FLOREX PUMPS INDUSTRIES 8/B National Highway, Near New Sardar Marketing yard, Opp Sardar tyres, Gondal, Distt : Rajkot, Gujarat-360311	Openwell Submersible Pumpsets-Specification	14220	0	0	1994
11	2875982	11/04/2014	M/s. MADHAV POLYMERS Survey No. 215, Plot No. 3-B, B/H Darshan Park Society Opp. Maruti Oil Mill, N.H. 8B, Veraval (Shapur), Distt : Rajkot, Gujarat-360024	Emitting pipes system	13488	0	0	2008
12	2876782	16/04/2014	M/s. TRUPATI WIRE CAB Plot No. 6, Survey No. 60 P. 1, Tarang Ind. Area, Opp. Wandheshwar Temple, National Highway 8B, Hadamatala, Taluka-Kotda Sangani, District : Rajkot, Gujarat-360211	PVC Insulated cables for working voltages upta and including 1100V	694	0	0	1990
13	2876883	16/04/2014	M/s. FLOWIN CABLES Survey No. 143, Plot No. 58, Near Railway over Bridge, Dhebar Road, Kothariya, District : Rajkot, Gujarat-360002	PVC Insulated cables for working voltages upta and including 1100V	694	0	0	1990
14	2876984	16/04/2014	M/s. JAY VIJAY COR-PORATION Surve No.-187, Plot No.-6A, Opp/Gujrat Intrux Pvt. Ltd. At Shapar, Taluka Kotda Sangani, District : Rajkot, Gujarat-360030	PVC Insulated cables for working voltages upta and including 1100V	694	0	0	1990
15	2877582	17/04/2014	M/s. CAST AND BLOWER COMPANY (GUJRAT) PVT. LTD. P.B. No. 1009, Trishul Pump, Aji Ind. Estate, 80 feet Road, District : Rajkot Gujarat-360003	Openwell Submersible Pumpsets-Specification	14220	0	0	1994
16	2877683	21/04/2014	M/s. REBECCA LAMINATES 8-A N.H. Sokhada Bus Stop, Taluka Morbi, Bahadurgadh, Distt : Rajkot, Gujarat-363642	Decorative Thermo-setting Synthetic Resin Bonded Laminated Sheets-Specification	2046	0	0	1995
17	2879283	24/04/2014	M/s. H. M. PLASTICS Gokul Nagar-4, Gokuldham Main Road, Gujarat Casting Street, Distt : Rajkot, Gujarat-364004	Valve Fittings for Compressed Gas Cylinders Excluding Liquefied Petroleum Gas (LPG) Cylinders-Specification	3224	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
18	2879586	28/04/2014	M/s. RAMESHWAR INDUSTRIES 3, Gokul Nagar, Opp. Jain Plastic, Gokuldham Main Road, District : Rajkot, Gujarat-360004	Submersible Pumpsets-Specification	8034	0	0	2002

[No. CMD/ 13:11]

S. CHATURVEDI, Scientist 'F' & Head

नई दिल्ली, 28 जून, 2014

का.आ. 1879.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को लाईसेंस रद्द किए गए हैं :--

अनुसूची

क्र. सं.	लाइसेंस सं.	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द होने की तिथि
1.	3757072	मैसर्स मोमाई एन्टरप्राईज जीआईडीसी प्लॉट नं. 11, गांव भाटीया, तालुका कल्याणपुर, जिला जामनगर, गुजरात–361315	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	29 अप्रैल 2014

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

सं. चतुर्वेदी, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 28th June, 2014

S.O. 1879.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below have been cancelled/ suspended with effect from the date indicated against each:—

SCHEDULE

Sl. No.	Licence No. CM/L-	Name & Address of the Licensee	Article/ Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
1.	3757072	M/s. MOMAI ENTERPRISE GIDC Plot No. 11, Village Bhatiya, Taluka Kalyanpur, District : Jamnagar, Gujarat-361315	Packaged Drinking Water (other than Packaged Natural Mineral Water)	29/04/2014

[No. CMD/13: 11]

S. CHATURVEDI, Scientist 'F' & Head

अंतरिक्ष विभाग

बेंगलूर, 1 जुलाई, 2014

का.आ. 1880.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में एतद्द्वारा अन्तरिक्ष विभाग के निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[सं. 8/1/10/2011-हिं.]

एन. पट्टाभि रामन, अवर सचिव

DEPARTMENT OF SPACE

Bangalore, the 1st July, 2014

S.O. 1880.—In pursuance of Sub-rule (4) of the Rule 10 of the Official Language (use for official purpose of the Union) Rule, 1976, the Central Government, hereby notifies the following Office of the Department of Space, whereof more than 80 percent staff have acquired the working knowledge of Hindi.

[No. 8/1/10/2011-H.]

N. PATTABHI RAMAN, Under Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 20 जून, 2014

का.आ. 1881.—बहु-राज्य सहकारी समिति अधिनियम, 2002 (2002 का 39) के खण्ड 4 के उपखण्ड (1) में प्रदत्त शक्तियों का प्रयोग करते हुए तथा भारत सरकार के दिनांक 20 मई, 2013 की अधिसूचना सं. एल-11012/2/2003-एलएंडएम के अधिक्रमण में केन्द्र सरकार, श्री राज सिंह, संयुक्त सचिव (सहकारिता), कृषि मंत्रालय, कृषि एवं सहकारिता विभाग को सहकारी समितियों के केन्द्रीय रजिस्ट्रार के रूप में तत्काल प्रभाव से तथा आगामी आदेशों तक नियुक्त किया जाता है।

[सं. एल-11012/2/2003/-एलएंडएम]

घनश्याम ठाकुर, अवर सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

New Delhi, the 20th June, 2014

S.O. 1881.—In exercise of the powers conferred vide sub-section (1) of Section 4 of the Multi-State Cooperative Societies Act, 2002 (39 of 2002) and in supersession of the Government of India Notification No. L-11012/2/2003-L&M dated 20th May, 2013, the Central Government hereby appoints Shri Raj Singh, Joint Secretary (Cooperation) in the Ministry of Agriculture, Department of Agriculture & Cooperation, as the Central Registrar of Cooperative Societies with immediate effect and until further orders.

[No. L-11012/2/2003 L&M]

GHANSHYAM THAKUR, Under Secy.

(कृषि अनुसंधान एवं शिक्षा विभाग)

नई दिल्ली, 3 जुलाई, 2014

का.आ. 1882.—केन्द्रीय सरकार कृषि मंत्रालय, कृषि अनुसंधान एवं शिक्षा विभाग, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली 1976 के नियम 10 के उपनियम (4) के अनुसरण में भा.कृ.अ.प. के परियोजना निदेशालय खुर पका एवं मुंह पका रोग, भा.प.चि.अ. परिसर, मुक्तेश्वर, नैनीताल, उत्तराखंड को जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है।

[सं. 13-10/2009-हिंदी/226]

अलका आहूजा, अवर सचिव

(Department of Agricultural Research & Education)

New Delhi, the 3rd July, 2014

S.O. 1882.—In pursuance of sub-Rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules 1976, the Central Government, Ministry of Agriculture, Department of Agricultural Research & Education hereby notified the Project Directorate on foot and Mouth Disease IVRI Campus Mukteshwar-263138 Uttrakhand where more than 80% of Staff have acquired the working knowledge of Hindi.

[No. 13-10/2009-Hindi/226]

ALKA AHUJA, Under Secy.

वस्त्र मंत्रालय

नई दिल्ली, 25 जून, 2014

का.आ. 1883.—केन्द्रीय सरकार, (संघ के शासकीय प्रयोजनों के लिए) राजभाषा नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालयों को जिसके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :--

1. अनुसंधान प्रसार केंद्र, केंद्रीय रेशम बोर्ड, बढ़ैनी इंटर कॉलेज के पास, भदरासी, वाराणसी-221311 (उत्तर प्रदेश)
2. राष्ट्रीय फैशन टैक्नॉलाजी संस्थान (निफ्ट), नई दिल्ली केंद्र, निफ्ट कैम्पस, हौज खास, निकट गुलमोहर पार्क, नई दिल्ली-110016 (राष्ट्रीय राजधानी क्षेत्र दिल्ली)
3. राष्ट्रीय फैशन टैक्नॉलाजी संस्थान (निफ्ट), कोलकाता केंद्र, निफ्ट कैम्पस, ब्लॉक एलए, प्लॉट-3बी, सैक्टर-III, साल्ट लेक सिटी, कोलकाता-700098 (प. बंगाल)
4. राष्ट्रीय फैशन टैक्नॉलाजी संस्थान (निफ्ट), रायबरेली केंद्र, निफ्ट कैम्पस, दूरभाष नगर, रायबरेली-229010 (उत्तर प्रदेश)

[सं. ई-11016/1/2011-हिन्दी]

सुनयना तोमर, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 25th June, 2014

S.O. 1883.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for the official purpose of the Union) Rules, 1976, the Central Government, hereby notifies the following offices of the Ministry of Textiles, more than 80% staff whereof have acquired working knowledge of Hindi:—

1. Research Extention Centre, Central Silk Board, Near Barrahini Inter College, Bhadrasi, Varanasi-221311 (U.P.)
2. National Institute of Fashion Technology (NIFT), New Delhi Centre, NIFT Campus, Hauz Khas, Near Gulmohar Park, New Delhi-110016 (NCT, Delhi)
3. National Institute of Fashion Technology (NIFT), Kolkata Centre, NIFT Campus, Block-LA, Plot-3B, Sector-III, Salt Lake City, Kolkata-700098, (West Bengal)
4. National Institute of Fashion Technology (NIFT), Raebareli Centre, NIFT Campus, Doorbhash Nagar, Raebareli-229010 (U.P.)

[No. 11016/1/2011-Hindi]

SUNAINA TOMAR, Jt. Secy.

कोयला मंत्रालय

नई दिल्ली, 30 जून, 2014

का.आ. 1884.—केन्द्रीय सरकार, को यह प्रतीत होता है कि, इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में कोयला अभिप्राप्त किये जाने की संभावना है;

और उक्त अनुसूची में वर्णित भूमि के क्षेत्र का ब्यौरा अंतर्विष्ट करने वाले रेखांक संख्या एसईसीएल/बीएसपी/जीएम/पीएलजी/लैंड, तारीख 28 जनवरी, 2013 का निरीक्षण महाप्रबंधक (गवेषण प्रभाग), सेंट्रल माइन प्लानिंग एण्ड डिजाइन इन्स्टीच्यूट लिमिटेड, गोंदवाना प्लेस, कांके रोड, रांची के कार्यालय में या कोयला नियंत्रक, 1. काउंसिल हाऊस स्ट्रीट, कोलकाता-700001 के कार्यालय में या जिला कलेक्टर, जिला शहडोल, मध्य प्रदेश के कार्यालय में किया जा सकता है;

अत: अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पूर्वोक्त अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है;

उपर्युक्त वर्णित अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति इस अधिसूचना के प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर महाप्रबंधक (गवेषण प्रभाग), सेंट्रल माइन प्लानिंग एण्ड डिजाइन इन्स्टीच्यूट लिमिटेड, गोंदवाना प्लेस, कांके रोड, रांची-834031 (झारखंड) को-

(i) उक्त अधिनियम की धारा 4 की उप धारा (3) के अधीन की गई किसी कार्रवाई से हुई या संभाव्य होने वाली किसी क्षति के लिये उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन प्रतिकर का दावा कर सकेगा;

(ii) उक्त अधिनियम की धारा 13 की उप धारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने की बाबत प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत की उपगत व्यय को उपदर्शित करने के लिये पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

अनुसूची

पटासी ब्लॉक, सोहागपुर कोयला क्षेत्र

जिला-शहडोल, मध्य प्रदेश

(रेखांक संख्या एसईसीएल/बीएसपी/जीएम/पीएलजी/लैंड, तारीख 28 जनवरी, 2013

क्रम सं.	मौजा/ ग्राम	तहसील	पटवारी हल्का संख्या	बन्दोबस्त संख्या	जिला	क्षेत्र एकड़ में (लगभग)	क्षेत्र हैक्टर में (लगभग)	टिप्पण
1.	नवलपुर	सोहागपुर	63	503	शहडोल	2471.10	1000.00	भाग
2.	लालपुर	सोहागपुर	64	918	शहडोल	123.56	50.00	भाग
3.	धुरवार	सोहागपुर	69	492	शहडोल	123.55	50.00	भाग
4.	हरदी	सोहागपुर	62	1029	शहडोल	247.11	100.00	भाग

कुल क्षेत्र : 2965.32 एकड़ (लगभग) या 1200.00 हैक्टर (लगभग)

सीमा वर्णन:

क-ख यह रेखा हरदी ग्राम के बिन्दु 'क' से आरंभ होती है और नवलपुर ग्राम के बिन्दु 'ख' पर जाकर मिलती है। रेखा 'क'-'ख' इस ब्लॉक की उत्तरी सीमा का निर्माण करता है।

ख-ग यह रेखा ग्राम नवलपुर के बिन्दु 'ख' से आरंभ होती है और उसी ग्राम के बिन्दु 'ग' पर मिलती है। रेखा 'ख'-'ग' इस ब्लॉक के पूर्वी सीमा का भाग है।

ग-घ यह रेखा ग्राम नवलपुर के बिन्दु 'ग' से आरंभ होती है और ग्राम लालपुर के बिन्दु 'घ' पर मिलती है। रेखा 'ग'-'घ' इस ब्लॉक के पूर्वी सीमा का भाग है।

घ-ङ यह रेखा ग्राम लालपुर के बिन्दु 'घ' से आरंभ होती है और उसी ग्राम के बिन्दु 'ङ' पर मिलती है। रेखा 'घ'-'ङ' इस ब्लॉक के पूर्वी सीमा का भाग है।

ङ-च यह रेखा ग्राम लालपुर के बिन्दु 'ङ' से आरंभ होती है और ग्राम धुरवार के बिन्दु 'च' पर मिलती है। रेखा 'ङ'-'च' इस ब्लॉक की दक्षिणी सीमा का निर्माण करता है।

च-क यह रेखा ग्राम धुरवार के बिन्दु 'च' से आरंभ होती है और ग्राम नवलपुर से होकर गुजरती हुए हरदी ग्राम के बिन्दु 'क' पर जाकर मिलती है। रेखा 'च'-'क' इस ब्लॉक की पश्चिमी सीमा का निर्माण करता है।

[फा. सं. 43015/08/2014-पीआरआईडब्ल्यू-I]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

New Delhi, the 30th June, 2014

S.O. 1884.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule annexed hereto;

And, whereas the plan bearing number SECL/BSP/GM/PLG/LAND, dated the 28th January, 2013 contained the detailed of the area of land described in the said Scheduled may be inspected at the office of the General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Place, Kanke Road, Ranchi or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the Office of the District Collector, District Shahdol, Madhya Pradesh.

Now, therefore in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquision and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the aforesaid schedule;

Any person interested in the land described in the aforesaid Schedule may :—

(i) claim compensation under sub-section(1) of section 6 of the said Act for any damage/caused or likely to be caused by any action taken under sub-section 3 of section 4 of the said Act; or

(ii) claim compensation under sub-section(1) of section 13 of the said Act in respect of prospecting licence ceasing to have effect or under sub-section(4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub-section (1) of section 13 of the said Act,

to the Office of the General Manager (Exploration Division), Central Mine Planning and Design Institute Limited, Gondwana Place, Kanke Road, Ranchi-834031 (Jharkhand) within a period of ninety days from the date of publication of this notification.

SCHEDULE

Patasi Block, Sohagpur Coalfied
District-Shahdol, Madhya Pradesh
(the plan bearing number SECL/BSP/GM/PLG/LAND, dated the 28th January, 2013

Sl. No.	Mouja/ Village	Tahsil	Patwari halka number	Bando-bast number	District	Area in Acres (approxi-mately)	Area in hectares (approxi-mately)	Rema-rks
1	2	3	4	5	6	7	8	9
1.	Navalpur	Sohagpur	63	503	Shahdol	2471-10	1000.00	Part
2.	Lalpur	Sohagpur	64	918	Shahdol	123-56	50.00	Part
3.	Dhurwar	Sohagpur	69	492	Shahdol	123-55	50.00	Part
4.	Hardi	Sohagpur	62	1029	Shahdol	247-11	100.00	Part

Total area : 2965.32 acres (approximately) or 1200.00 hectares (approximately)

Boundary description :

A-B Line starts from point 'A' in Hardi village and meet at point 'B' in Navalpur village. 'A-B' line forms the northern boundary of the block.

B-C The line starts from point 'B' in Navalpur village and meet at point 'C' in same village. 'B-C' line forms the part of eastern boundary of the block.

C-D The line starts from point 'C' in Navalpur village and meet at point 'D' in Lalpur village. 'C-D' line also forms the part of eastern boundary of the block.

D-E The line starts from point 'D ' in Lalpur village and meet at point 'E' in Dhurwar village. 'E-F' line forms the part of eastern boundary of the block.

E-F The line starts from point 'E' in Lalpur village and meet at point 'F' in same village. 'D-E' line forms the part of Southern boundary of the block.

F-A The line starts from point 'F' in Dhurwar village and meet at point 'A' in Hardi village passing through the Navalpur village. 'F-A' line forms the western boundary of the block.

[F. No. 43015/08/2014-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 27 जून, 2014

का.आ. 1885.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्द्वारा दामोदर वैली कॉरपोरेशन (डीवीसी) के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट अधिसूचना जारी होने की तिथि से एक वर्ष की अवधि के लिए प्रभावी होगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन हैं; अर्थात्:--

1. पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

2. इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

3. छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

4. उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् ''उक्त अवधि कहा गया है'') प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

5. निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :--

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य

परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण करना ।

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/06/2014-एस.एस-I]

अजय मलिक, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th June, 2014

S.O. 1885.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/ establishments of Damodar Valley Corporation (DVC), Kolkata from the operation of the said Act. The exemption shall be effective from the date of issue of notification for a period of one year.

2. The above exemption is subject to the following conditions namely :—

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exampted employees;

(2) Notwithstanding this exemption, the employees shall to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employed, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/06/2014-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 जून, 2014

का.आ. 1886.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्द्वारा नेशनल फर्टिलाइजर लिमिटेड (नांगल, भटिंडा एवं पानीपत यूनिटें) के कारखानों/स्थापनाओं प्रभावी होगी। नियमित कर्मचारियों को इस अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट अधिसूचना जारी होने की तिथि से एक वर्ष की अवधि के लिए प्रभावी होगी।

3. उक्त छूट निम्नलिखित शर्तों के अधीन हैं; अर्थात्:--

1. पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

2. इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

3. छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

4. उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् ''उक्त अवधि कहा गया है'') प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

4. निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :--

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण करना ।

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/13/2011-एस.एस-I]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2014

S.O. 1886.—In exercise of the power conferred by section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/ establishments of National Fertilizers Limited (Nangal, Bhatinda & Panipat Units) from the operation of the said Act. The exemption shall be effective from the date of issue of notification for a period of one year.

2. The above exemption is subject to the following conditions namely :—

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exampted employees;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, whall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of Section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; and

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employed, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/13/2011-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 जून, 2014

का.आ. 1887.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91–क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्द्वारा मैसर्स इंडियन फारमर्स फर्टिलाइजर कॉपरेटिव लिमिटेड (इॅफको), (सभी यूनिट/कार्यालय) के नियमित कर्मचारियों को इस अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट अधिसूचना जारी होने की तिथि से एक वर्ष की अवधि के लिए प्रभावी होगी।

3. उक्त छूट निम्नलिखित शर्तों के अधीन हैं; अर्थात्:--

1. पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

2. इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस

अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

3. छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

4. उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् ''उक्त अवधि कहा गया है'') प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

5. निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :--

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना ।

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/05/2014-एस.एस-I]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2014

S.O. 1887.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of M/s. Indian farmers Fertiliser Corporative Ltd. (IFFCO), (All Units/ officers) from the operation of the said Act. The exemption shall be effective from the date of issue of notification for a period of one year.

2. The above exemption is subject to the following conditions namely :—

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exampted employees;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of

the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employed, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copes of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/05/2014-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 जून, 2014

का.आ. 1888.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्द्वारा मैसर्स सेमीकंडक्टर लैबोरेटरी, मोहाली के नियमित कर्मचारियों को इस अधि नियम के प्रचालन से छूट प्रदान करती है। यह छूट 26.07.2014 से एक वर्ष की अवधि के लिए प्रभावी होगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन हैं; अर्थात्:--

1. पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

2. इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

3. छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुक हों, तो वे वापस नहीं किए जाएंगे;

4. उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् ''उक्त अवधि कहा गया है'') प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

5. निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :--

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण करना ।

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/07/2014-एस.एस-I]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2014

S.O. 1888.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of M/s. Semi-Conductor Laboratory, Mohali from the operation of the said Act. The exemption shall be effective from 26.07.2014 for a period of one year.

2. The above exemption is subject to the following conditions namely :—

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exampted employees;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copes of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/07/2014-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 27 जून, 2014

का.आ. 1889.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इंडियन रेयर अर्थ लिमिटेड के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रचालन से छूट प्रदान करती है। यह छूट इस अधि सूचना के जारी होने की तारीख से एक वर्ष की अवधि के लिए प्रभावी होगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन हैं; अर्थात्:--

1. पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

2. इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

3. छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;

4. उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् ''उक्त अवधि कहा गया है'') प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

5. निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :--

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधि-भोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण करना ।

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[(सं. एस-38014/08/2014-एस.एस-I)]

अजय मलिक, अवर सचिव

New Delhi, the 27th June, 2014

S.O. 1889.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factory/ establishments of Indian Rare Earths Limited from the operation of the said Act. The exemption shall be effective from the date of issue of notification for a period of one year.

2. The above exemption is subject to the following conditions namely :—

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exampted employees;

(2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copes of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/08/2014-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1890.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए सैन्ट्रल कॉटेज इंडस्ट्रीज कॉरपोरेशन लिमिटेड के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट 19.07.2014 से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन हैं; अर्थात्:--

1. पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

2. इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;

3. छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुक हों, तो वे वापस नहीं किए जाएंगे;

4. उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात् ''उक्त अवधि काह गया है'') प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;

5. निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;

(i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टयों को सत्यापित करने के प्रयोजनार्थ; अथवा

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या

(iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या

(iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :--

(क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा

(ख) ऐसे प्रधान या आसन्न नियोजक के अधि-भोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण करना ।

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना ।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वत: रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस–38014/17/2013–एसएस–I]

अजय मलिक, अवर सचिव

New Delhi, the 1st July, 2014

S.O. 1890.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factory/establishments of Central Cottage Industries Corporation of India Limited from the operation of the said Act. The exemption shall be effective from 19.07.2014 for a period of one year.

2. The above exemption is subject to the following conditions namely :—

(1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exampted employees;

(2) Notwithstanding this exemption, the employees shall to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;

(3) The contributions for the exempted period, if already paid, shall not be refundable;

(4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under sub-section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :—

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to :

(a) require the principal or immediate employer to furnish to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employed, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copes of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

6. In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38013/17/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 22 मई, 2014

का.आ. 1891.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी डायरेक्टर ऑफ़ टिया डेवलपमेंट टी बोर्ड नीलगिरिस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 14/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/05/2014 को प्राप्त हुआ था।

[सं. एल-42012/184/2013-आईआर(डीयू)

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 22nd May, 2014

S.O. 1891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 14/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Deputy Director of Tea Development Tea Board, Nilgiris and their workman, which was received by the Central Government on 20/05/2014.

[No. L-42012/184/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT, CHENNAI

Thursday, the 8th May, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 14/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Tea Board and their workman)

BETWEEN

Sri N. Lakshmanan : 1st Party/Petitioner

AND

The Dy. Director of Tea Development : 2nd Party/Respondent

Tea Board, "Shelwood"
Club Road, PO Box No. 6
Coonoor-643101
Nilgiris

Appearances :

For the 1st Party/Petitioner : In Person

For the 2nd Party/Respondent : M/s Paul & Paul, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/184/2013-IR(DU) dated 27.02.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Tea Board, Coonoor in terminating the services of Sri N. Lakshmanan is justified? If not, to what relief is he entitled to?

2. After receipt of the Industrial Dispute this Tribunal has numbered it as ID 14/2014 and issued notice to both sides. On receipt of notice the First Party has appeared in person and the Respondent has appeared through Counsel.

3. After the first date of appearance the First Party was absent continuously. He seems to be not interested in pursuing the matter. He has not cared to file Claim Statement. So the ID is closed.

An award is passed accordingly.

Typed to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 8th May, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked on both sides

–Nil–

नई दिल्ली, 24 जून, 2014

का.आ. 1892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 09/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–22012/326/1999–आई. आर. (सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th June, 2014

S.O. 1892.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2000) of the Cent. Govt.Indus.Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial Dispute between the management of Dankuni Coal Complex and their workmen, received by the Central Government on 24/06/2014.

[No. L-22012/326/1999 - IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 09 of 2000

PARTIES : Employers in relation to the management of The Chief General Manager, Dankuni Coal Complex

AND

Their workmen.

Present : JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : Mr. Saibal Mukherjee, Ld. Counsel.

State: West Bengal Industry: Coal

Dated: 2nd June, 2014.

AWARD

By Order No. L-22012/326/99/IR(CM-II) dated 27.01.2000 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Dankuni Coal Complex (SECL) in not considering the seniority to Sh. Tapas Bhattacharjee, Clerk – Special Grade w.e.f. 1992 at par with Sh. Subrata Bhaduri, Clerk Special Grade is justified? If not, to what relief is the workman entitled?"

2.The instant reference has arisen at the instance of one Tapas Bhattacharjee, concerned workman, for non-consideration of his seniority in the matter of promotion to Clerk Special Grade from Clerk Grade I.

3. Bereft of all unnecessary details the workman's case is as follows: Concerned workman Shri Tapas Bhattacharjee while, posted as Clerk Grade-I in Sripur Area of Eastern Coalfields Ltd., applied for transfer to Dankuni Coal Complex. The authority, after observing all formalities, allowed his application for transfer and accordingly Shri Bhattacharjee was transferred to Dankuni Coal Complex. He then joined there and started working as Clerk Grade-I on and from 21.12.1989.

Similarly, Subrata Bhaduri, another workman was transferred to Dankuni Coal Complex and he joined there on 16.06.1986 as Clerk Grade-II. Thereafter he was promoted in Clerk Grade-I on 12.12.1987 after counting the period of service rendered by him at his earlier place of posting.

It is contended that at the time of transfer to Dankuni Coal Complex, Company issued circulars (Ext. W-05 and Ext. W-12) wherein it is stated that "Since the transfer is at their own request, they will not be entitled to transfer TA/DA and joining time excepting actual journey period and their seniority in the grade will be fixed from the date of their joining in Dankuni Coal Complex." But in case of A. Roy Chowdhury, Shyamali Mondal, Arun Banerjee and Dipak Das promotion was given to them after considering the period of service rendered by them at their previous place of posting. It is further contended that Shri Tapas Bhattacharjee would have been entitled to promotion in 1992 if the period of his service in the earlier place of posting was considered. But he was denied such promotion in 1992 because his seniority was considered from the date of his joining Dankuni Coal Complex.

4. As against this, management has opposed the claim and stated that the seniority is maintained unitwise/departmentwise and not Companywise. According to the management, the case of Shri Tapas Bhattacharjee was not at par with Shri Subrata Bhaduri. It is submitted that Shri Subrata Bhaduri completed five years of service in the post of Clerk Grade-I in Dankuni Complex and accordingly, he was promoted in Clerk Special Grade in 1992.

5. By filing rejoinder, the workman has contended that the promotion policy adopted by the management of the Company was not followed in the case of the concerned workman, Shri Tapas Bhattacharjee.

6. In this case the workman has in support of his case examined two witnesses including himself. Management has also examined one witness. The documents filed on behalf of the workman have been marked Ext.W-01 to Ext. W-25. The documents of the management have also been marked Ext. M-01 to Ext. M.-07.

7. On perusal of the evidence of the workman it appears that the said witnesses have supported the case of the workman by corroborating the facts as disclosed in the statement of claim and rejoinder of the workman. The witness of the management, on the other hand, has corroborated the case of the management as stated in the written statement.

8. From Ext. W-25 it appears that a person requires minimum 3 years experience in Clerk Grade-II for promotion to Clerk Grade-I and 5 years for promotion from Clerk Grade-I to Clerk Special Grade.

Now, Ext. W-09 goes to show that Subrata Bhaduri, Shyamali Mondal, Amitava Roy Chowdhury, Dipak Das and Arun Banerjee were transferred to Dankuni Coal Complex on 16.06.1986, 1.03.1987, 01.04.1987, 02.05.1987 and 08.04.1987 respectively and at that time their post was Clerk Grade-II. But Subrata Bhaduri was promoted in Clerk Grade-I on 12.12.1987 and others on 02.05.1987. So, it is evident that before completion three years' service, the aforesaid persons were promoted from Clerk Grade-II to Clerk Grade-I.

But, in case of Tapas Bhattacharjee, his period of service in the previous posting was not taken into consideration at the time of his promotion from Clerk Grade-I to Clerk Special Grade. He was promoted only after his completion of five years' service at Dankuni Coal Complex.

9. By pointing out Ext. W-05 and Ext. W-12 it is argued that Shyamali Mondal, Amitava Roy Chowdhury, Dipak Das and Arun Banerjee were transferred to Dankuni Coal Complex as per the terms and condition that "Their seniority in the existing grad in D.C.C. will be reckoned from the date they joined D.C.C.". Similar circular was also issued at the time of transfer of Tapas Bhattacherjee. But the period of service of the previous place of posting was considered at the time of promotion of Sm. Shyamali Mondal, Shri Amitava Roy Chowdhury, Shri Dipak Das and Shri Arun Banerjee and the same principle was not followed at the time of giving promotion to Shri Tapas Bhattacharjee and there was a gross violation of Article 14 of the Constitution of India by way of making an artificial and unreasonable classification.

10. It has been submitted that transfer on compassionate ground at the request of the employee, the period of service rendered by the employee at earlier place cannot be kept out of consideration in determining his eligibility for promotion. In support of the said contention a reference has been made to the decisions reported in 1998 LAB I.C. 2517 and 1996 LAB I.C. 763.

From the decision reported in 1998 LAB I.C. 2517 it appears that ".....Even if an employee transferred on his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. ....."

It has been held in the decision reported in 1996 LAB I.C. 763 that "The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he was transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred."

11. Perused the evidence of the witness of the management, Shri S.B. Das Mahapatra From his evidence it appears that the said witness has failed to state whether or not the transfer of Shri Bhattacherjee was administrative transfer or an on request transfer.

12. Now, considering the evidence on record with reference to the terms and conditions as incorporated in Ext. W-05 and Ext. W-12 it appears that inspite of the terms and conditions as noted in the said circulars, the period of service of the previous place of posting was counted in respect of Shyamali Mondal, Amitava Roy Chowdhury, Dipak Das and Arun Banerjee at the time of their promotion. But the same procedure was not followed in case of Shri Tapas Bhattacherjee.

13. Ext. W-9 goes to show that Subrata Bhaduri joined Dankuni Coal Complex on 16.06.1986 and was posted as Clerk Grade-II and thereafter on 12.12.1987 he was promoted in Clerk Grade-I. From the above facts it is evident that the period of service of the previous place of posting was considered at the time of promotion of Shri Bhaduri. Written argument of the management does not disclose that the transfer in question of Shri Subrata Bhaduri was administrative transfer and not an on request transfer and that Tapas Bhattacharjee and Subrata Bhaduri were not placed on same footing.

14. The management in its written argument has stated that the concerned workman by accepting the terms and conditions of the order of transfer joined Dankuni Coal Complex and thereby he relinquished his seniority. So, in subsequent stage he cannot claim that the service period of his previous posting should be considered for the purpose of his promotion.

It has already been pointed out that in the order of transfer of Tapas Bhattacharjee and also in the transfer order of Shyamali Mondal and three others almost similar terms and conditions were imposed to the effect that seniority would be counted from the date of joining at Dankuni Coal Complex. But before completion of three years at Dankuni Coal Complex, Shyamali Mondal and three others were promoted from Clerk Grade-II to Clerk Grade-I. But in the case of promotion of Shri Tapas Bhattacherjee, the same principle was not followed at the time of his promotion from Clerk Grade-I to Clerk Special Grade in clear violation of the principle of Article 14 of the Constitution of India.

15. In view of the discussion made above, it is evident that decision of the management in not reckoning the seniority of Shri Tapas Bhattacharjee from 13.12.1986 and thereby denying his promotion to Clerk Special Grade from Clerk Grade-I was bad, arbitrary and the same being discriminatory cannot be sustained in the eye of law. Management should reconsider the promotion of Shri Tapas Bhattacharjee from Clerk Grade-I to Clerk Special Grade and for that his seniority should be counted from 13.12.1986.

The reference is answered accordingly.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 2nd June, 2014.

नई दिल्ली, 24 जून, 2014

का.आ. 1893.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखन्नी के पंचाट (संदर्भ संख्या 35/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल. 22013/1/2014–आई. आर. (सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th June, 2014

S.O. 1893.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus.Tribunal-cum-Labour Court, Godavarikhani (IT/ID/35/2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 24.06.2014.

[No. L-22013/1/2014 - IR(C-II)

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT

AT GODAVARIKHANI

PRESENT :- Sri G.V. Krishnaiah, Chairman-cum-Presiding Officer, Godavarikhani

Tuesday, the 1ST day of April, 2014

INDUSTRIAL DISPUTE NO. 35 OF 2008

Between :-

Kondru Venkata Upender, Ex-Badili Filler, E.C.No.2915382, S/o. Yakaiah, Aged about 35 years, R/o. H.No.8-158, Bhagathsingh Nagar, RK-8 Incline, Srirampur Colony, Mancherial Mandal of Adilabad District.

...Petitioner/Workman

-A n d-

1. The Supdt of Mines, S.C.Co. Ltd, IK 1 A Incline, P.O: Srirampur, Dist: Adilabad (A.P.).
2. The General Manager, S.C.Co.Ltd, Srirampur Area, P.O: Srirampur, Dist: Adilabad (A.P.).
3. The Chairman & Managing Director, S.C.Co. Ltd., P.O: Kothagudem, District: Khammam (A.P.)

...Respondents/Management

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri B. Amarender Rao, Advocate, for the petitioner and Sri D. Krishnamurthy, Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:-

AWARD

1. This petition is filed by Ex-Badili Filler of Singareni Company Limited challenging his dismissal from service.

The allegations in the petition are as follows:-

2. It is stated that in the year 2006 the mother of the petitioner sustained major fracture to her leg and petitioner was attacked by Chicken Gunya in the month of April, 2006 to September, 2006, though petitioner submitted all original certificates but without considering them he had issued charge sheet that he worked 127 musters in the year 2005, that petitioner submitted satisfactory explanation to his charge sheet, that the copy of explanation is misplaced, that the enquiry was not conducted fairly, that the respondent failed to conduct family counseling and observation period to the petitioner after the Domestic Enquiry, which is against the Circulars and MOs of the Company, that ultimately petitioner was dismissed from service vide his order dated 13.09.2007, that the punishment is disproportionate to the alleged misconduct and therefore petitioner may be reinstated into service with continuity of service, all other consequential attendant benefits and full back wages.

3. R-2 filed counter adopted by R-1 and R-3 stating that the Respondent Company is a Central Government and therefore this Court has no jurisdiction. Petitioner attended for 37 days in the year 2004, 127 days in the year 2005, 87 days in the year 2006 and 30 days upto May, 2007. Petitioner was given charge sheet for habitual absence from duties without sufficient cause as per 25.25 standing order, that prior to imposing punishment petitioner was supplied with the enquiry reports and asked to show cause, that petitioner was kept under observation for three months i.e., from May, 2007 to July, 2007, but failed to avail opportunity. Therefore, petition may be dismissed.

4. During the course of enquiry, Exts.W-1 to W-5 and M-1 to M-7 are marked.

5. Now the point for consideration is:

"Whether the respondents are justified in dismissing the petitioner?"

6. As far as the attendance of the petitioner is concerned, there is no dispute about the number of days attended by the petitioner as alleged by the management is not in dispute. His attendance is poor during the years 2004, 2005 and 2006. Ext.M-2 is the explanation of the petitioner to the charge sheet served on him. Ext.M-2 is dated 27.4.2007, it shows that petitioner could not attend duties due to ill-health in the year 2006. As per Ext.M-4, petitioner attended for counseling on 28.4.2007 along with his family members, but in the month itself he was given show cause notice on 29.05.2007. On 13.09.2007 he was dismissed from service.

7. Therefore as far as absence of the petitioner is concerned there is no material on record to show that he was sick on his duties.

8. However, with regard to the proportion of the punishment, the misconduct of the petitioner does not involve moral turpitude or loss to the respondent company. Therefore, order of dismissal is not justified.

9. In the result, the order of dismissal dated 13.09.2007 marked as Ext.M-7 is set aside and the respondents' company is hereby directed to reinstate the petitioner into service as "Afresh Badili Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 1st day of April, 2014.

Sri G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-	For Management:-
-Nil-	-Nil-

EXHIBITS

For workman :

Ex.W-1	Dt. 03-09-2004	Office order (appointment order as Badli Filler)
Ex.W-2	Dt. 29-05-2007	Show cause notice.
Ex.W-3	Dt. 13-09-2007	Dismissal order. x.copy
Ex.W-4	Dt. 24-12-2007	Dismissal letter, o/copy
Ex.W-5	Dt. 27-12-2007	Postal Ack., card

For Management :

Ex.M-1	Dt. 18-04-2007	Charge sheet
Ex.M-2	Dt. 27-04-2007	Reply to charge sheet.
Ex.M-3	Dt. 27-04-2004	Enquiry proceedings
Ex.M-4	Dt. 28-04-2007	Undertaking given by the petitioner after counseling regarding absenteeism.
Ex.M-5	Dt. 05-05-2007	Enquiry report.
Ex.M-6	Dt. 29-05-2007	Show cause notice.
Ex.M-7	Dt. 13-09-2007	Dismissal order.

नई दिल्ली, दिनांक 24 जून, 2014

का.आ. 1894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 31/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–22012/82/2004–आई. आर. (सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th June, 2014

S.O. 1894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of New Majri Open Cast Sub Area of W.C.L. and their workmen, received by the Central Government on 24/06/2014.

[No. - L-22012/82/2004 - IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/31/2005

Date: 02.06.2014

Party No.1 : The Sub Area Manager,
New Majri OCM Sub Area of
WCL, PO:Shivaji Nagar,
Distt. Chandrapur (MS).

Versus

Party No.2 : Shri Vilas S. Kakade (Dead)
Substituted by Legal heirs

1) Surekha V. Kakde (wife)
2) Karisma daughter
3) Diksha daughter
4) Shivangi daughter
:Address:
C/o. Shri Lomesh Khartad,
General Secretary,
National Colliery Mazdoor Congress,
Dr. Ambedkar nagar, Ballarpur,
Post & Tah. Ballarpur, Distt.
Chandrapur.

AWARD

(Dated: 2nd June, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial

dispute between the employers, in relation to the management of WCL and their workman, Shri Vilas S. Kakade, for adjudication, as per letter No.L-22012/82/2004-IR (CM-II) dated 07.02.2005, with the following schedule:-

"Whether the action of the management in relation to New Majri Open Cast Sub Area of Western Coalfields Limited in terminating the service of Shri Vilas S. Kakade, Ex-General Mazdoor, New Majri Open Cast Sub Area vide order No. WCL/MA/SAM/NMOC-II/PER/3/228 dated 12.06.2003 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "National Colliery Mazdoor Congress", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Vilas Kakade, ("the workman" in short) and the management of WCL, ("party no.1" in short) filed the written statement.

The case as projected in the statement of claim by the union on behalf of the deceased workman was that it (union) is a registered trade union under the Trade Unions Act,1926 and the party no.1 is a Government company owned and controlled by the Central Government and is a State, as per Article 12 of the Constitution of India and the management of party no.1 is not competent to resort the change in service conditions, wage structures, monetary benefits and other service conditions provided to the workers unilaterally, in contravention of the provisions contained in the National Coal Wage Agreements ("the NCWA" in short) and so far six NCWAs have already been signed and finalization of NCWA- VII is in the process and the provisions contained in NCWAs have become the terms and conditions of service and the said provisions cannot be interpreted unilaterally by the party No.1.

The further case as presented by the union on behalf of the workman is that the workman was appointed on 09.01.1993 as a general Mazdoor and worked at New Majri Open cast II (A) Mine and he put in unblemished service and during the course of his service, he suffered from serious diseases and party No.1 had referred him to different hospitals for treatment and during the period of his treatment, the workman was not even able to attend natural calls without the help of others and he was completely depressed and demoralized and he was not in a position to take any decision and the permanent address of the workman is village-Karmana, Post-office-Chili Parando, Tahashil-Wani, District-Yavatmal(MS), a remote village situated about 60 kilometers from new Majri Open Cast Mine II (A) and to avoid the difficulty in attending duty in odd hours and for his treatment, the workman took a rented house in Wani town and remained there.

It is further pleaded by the union that charge sheet No.489 dated 20/22.10.2002 was issued against the workman and he was kept suspended without any written communication or payment of subsistence allowance and he was allowed to resume duty after a gap of several weeks and the charge sheet submitted against the workman was vague and the suffered from several infirmities and the workman was not given full and fair opportunity to defend himself during the enquiry and the Enquiry Officer acted arbitrarily and proceeded with the enquiry ex-parte and the workman had never received any communication, such as letter of appointment of the Enquiry Officer and number of notices of the enquiry and though the workman was residing in the rented house at Wani, the correspondences were made in his home address, as learnt from the documents produced by the party No.1 at the time of conciliation and the workman was not served with the second show cause notice and the workman lost the opportunity to explain his case and for that the action of party No.1 is liable to be quashed and the workman was also not served with the order of dismissal and due to non service of the dismissal order, such order does not exist and the entire departmental proceedings was without application of mind and was in contravention of the specific provisions of the Certified Standing Order and specific order of delegation of powers for disciplinary action and due to such violation, the workman lost the chance of appeal and the enquiry proceedings and report are biased and prejudicial and the same suffer from several serious infirmities and the enquiry officer acted merely as recorder and when the treatment of the workman was stopped at Majri hospital, the wife of the workman, Smt. Surekha approached the management at different level including the Personnel Manager and she was informed that her husband, the workman to have already been dismissed from services of the company.

The further case of the workman as presented in the statement of claim by the union is that the workman approached the then GM/CGM, Majri Area, with his wife and children and explained about his serious illness and submitted written appeal for reinstatement and placed papers relating to his illness and treatment and he was assured by the CGM for his reinstatement in services and the CGM also sent proposal for the reinstatement of the workman vide letter dated 04.07.2003 to the Head Office, Nagpur, but the workman was intimated by the Personnel Manager, New Majri area vide letter dated 14.09.2003, that the competent authority desired that such cases are to be put up only after one year of dismissal. It is also pleaded that during the service period, the workman suffered from various serious illness and he was referred by the management to various hospital for his treatment and the workman always kept the management informed about the same and basing on the papers produced by the workman about his treatment, the management had been taking sanction for his treatment, form the headquarters of the party no.1 and to decide the further course of action of his treatment and the enquiry was conducted in gross-violation of the principles of natural justice and the

punishment of dismissal is too harsh and disproportionate for the charge of absenteeism and his absence was due to the serious ailment and beyond his control and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all consequential benefits and in case the workman is found to be unfit for duty, his wife be given employment as per the provisions of 9.4.0 of the NCWA-VI.

3. It is necessary to mention here that during the pendency of the reference, the workman expired and his legal heirs, namely, Smt. Surekha Vilas Kakde (wife) and Karisma, Diksha and Shuvagini (daughters) were substituted in his place by order dated 20.03.2007.

4. The party no.1 denying the adverse allegations made in the statement of claim, in the written statement has pleaded inter-alia that the workman did not approach the Tribunal with clean hands and suppressed facts in order to mislead the Tribunal with the intention to gain misplaced sympathy and the legal heirs of the workman have accepted the order of dismissal of the workman by accepting all the terminal benefits without any protest and as such, the reference is liable to be answered in the negative.

It is further pleaded by party no.1 that they were constrained to initiate the departmental enquiry against the workman for remaining absent without any intimation or without obtaining leave and prior to issuance of the charge sheet in question, on earlier occasion also they had issued a charge sheet against the workman for remaining unauthorized absent and still then, the workman failed to improve his conduct and the charge sheet submitted against the workman was neither vague nor had several infirmities and the workman has failed to point out as to how the charge sheet was vague and of having several infirmities and the workman was never kept under suspension, rather, the workman failed to report for duties and when he reported for duties, he was allowed to resume duty pending the departmental enquiry and the workman himself submitted a medical certificate showing his fitness to resume duties and inspite of permitting him by the management to resume duties, he failed to join duty and they were having one address of the workman and all efforts were taken by them to serve the charge sheet, notices and second show cause notices etc, on the workman, by registered post, but the same could not be served as the workman was not available on the said given address and the workman had never informed the management of his staying in any rented house at a particular given address at wani and had it been the case that he was staying in a rented premises at Wani, then the workman must have disclosed the address of the said rented house in the statement of claim, but he did not disclose the same in the statement of claim and the enquiry cannot be faulted with, if the workman had changed his registered address without informing the same to the management and the enquiry was conducted against the workman by observing all the principles of natural justice and except the said statement made in the statement of claim, the workman has failed to point out as to how the enquiry, its procedure, report etc are defective and the workman was never assured for his reinstatement in service and though the recommendation was forwarded for approval of the headquarters to reinstate the workman, the same was refused and the workman did not file any appeal before the management and as such the question of giving him hearing does not arise and the special leave granted to the workman was much prior to the issuance of the charge sheet and submission of fitness certificate by the workman and the workman is not entitled to any relief.

5. In the rejoinder, the union has reiterated the facts mentioned in the statement of claim and has further mentioned that the charge sheet, letter of appointment of enquiry officer, notices of the enquiry, report of the enquiry officer and second show cause notice were not served on the workman. It is further pleaded by the union that the order of punishment was approved by the Chief General Manager, Majri Area, who is the appellate authority, so, the workman lost the chance of appeal and there was denied of the principles of natural justice and the legal heirs of the deceased workman are entitled for all the monetary benefits.

6. As this is a case of termination of the workman from services after conducting of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 27.03.2014, the departmental enquiry conducted against the workman was held to be proper, legal and in accordance with the principles of natural justice.

7. At the time of argument, it was submitted by the learned advocate for the union that the terms and service conditions of the employees of WCL are governed by the certified standing orders and National Coal Wages Agreements and the party No.1 being a public undertaking is a "state" within the meaning of Article 12 of the Constitution of India and in support of the validity of the departmental inquiry, the party No.1 did not adduce any evidence and it is clear from the charge sheet submitted against the workman that the same was submitted against him for remaining absent from duty for more than 10 days without sanctioned leave or sufficient cause w.e.f. 01.09.2002 and in the correspondence sent by party No.1 to the workman in his home address, the name of the post office was not correctly mentioned and it is also clear from the document, Ext. M-II filed by the party No.1 that the workman had submitted the medical certificate dated 16.11.2002 issued by Dr. D. Deshpande for the period from 01.09.2002 to 16.11.2002, covering the period of absence and management No. 23 shows that Shri Sayre, who was the personnel Manager and who was appointed as the Enquiry Officer initiated the note sheet dated 17/18.11.2002 to allow the workman on duty, finding from the medical

certificate that there was sufficient cause for the absence of the workman and the same was approved by the Chief General Manager and the order of dismissal from service of the workman has not been filed by the party No.1 and party No.1 did not consider the medical certificate, Ext. M-II and document No. 23. The note sheet for allowing the workman to join duty, in the enquiry and though on one hand the party No.1 accepted Ext. M-II to be valid, genuine and satisfactory and allowed the workman to resume duty, on the other hand without taking into consideration the said documents in the enquiry, dismissed him from service and thus party No.1 played hot and cold in the same breath and the Enquiry Officer travelled beyond his jurisdiction and acted merely as a recorder without application of mind and in view of Ext. M-II, which shows that the workman was prevented by sufficient cause for remaining absent from duty, the finding of the Enquiry Officer that the charge was proved against the workman is perverse and against the evidence on record. It was further submitted that the order of punishment has been approved by the Chief General Manager, who is the Appellate Authority and as such, the same is illegal and the appeal filed by the workman was not disposed of promptly i.e. within 45 days of receipt of the same as required under clause 30 of the Standing order and as such, the entire action taken by the party No.1 is illegal and against the principles of natural justice and the punishment from dismissal from service was too harsh and disproportionate and as the workman was entitled for reinstatement in service with continuity and full back wages, the wife of the workman is entitled for payment of the monetary compensation and also for employment as a dependant of the deceased workman and the benefits of life cover scheme.

In support of the submissions, the learned advocate for the union placed reliance on the decisions reported in AIR 1973 SC-2650 (Western India Match Company Ltd. Vs. Workmen),2007(115) FLR-427 (Mohan Mahto Vs. M/s. Central Coal Fields Ltd.), 2011-II-LLJ-627 (SC)(Union of India Vs. S.K. Kapoor), 2010(126) FLR-994(Indubhushan Dwivedi Vs. State of Jharkhand), 1995(70) FLR-817 (Surjit Ghosh Vs.Chairman cum Managing Director, United Commercial Bank), 2001 LAB IC (NOC) 829(CHH) (J Prasad Vs. Board of Directors) and 2010(1) Mh. L J-587 (Shriram Viswanath Deshpande Vs. Presiding Officer).

So, keeping in view the principles enunciated by the Hon'ble Courts in the decisions mentioned above, now, the present case in hand is to be considered.

8. It is to be mentioned here that party No.1 remained absent on the date of argument and did not make any argument.

9. As already stated, the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice.

So, the submissions made by the learned advocate for the union regarding the fairness of the departmental enquiry cannot be considered again.

10. Perused the record. It is found from the record that the workman has admitted to have remained absent from duty from 01.09.2002. According to the workman he was ill from 01.09.2011 to 16.11.2002 and was under the treatment of doctor at Wani and his absence from duty was on account of unavoidable, sufficient reasons and circumstances beyond his control and it was not willful or intentional. However, from the material on record, it is found that the workman had not taken any leave before remaining absent. He also did not intimate the management about his illness or that he was under the treatment of a doctor at Wani, during the period of remaining absent. It is also found that the management had never admitted the medical certificate, Ext. M-II, submitted by the workman to be genuine. On perusal of Ext. M-II, it is found that the same was obtained by the workman on 16.11.2002. Ext. M-II reveals that the workman was under the observation of the doctor from 01.09.2002 to 16.11.2002 as OPD patient for headache and defective vision right eye. The said certificate does not say that the workman was under the treatment of the doctor. It is also found that the workman was permitted by the party No.1 to join duty subject to continuance of the departmental enquiry. The document was never produced in the enquiry held against the workman.

It is also found from the record that the findings of the Enquiry Officer are based on the evidence on record of the enquiry and not any extraneous material. The Enquiry Officer has assigned reasons in support of his findings. Hence the findings of the Enquiry Officer cannot be said to be perverse.

11. It is also found from the record that the workman did not prefer any appeal against the order of punishment. The application as referred by the union is a mercy application to consider his reappointment. So, there was no question of disposal of the appeal within the time limit as claimed by the workman. There is also no definite material on record to show that the order of punishment was approved by the appellate authority.

From the material on record, it is found that commission of serious misconduct of remaining unauthorized absence has been proved against the workman in a properly conducted departmental enquiry. Hence, there is no scope to interfere with the punishment imposed against the workman. Hence, it is order:-

ORDER

The action of the management in relation to New Majri Open Cast Sub Area of Western Coalfields Limited in terminating the service of Shri Vilas S. Kakade, Ex-General Mazdoor, New Majri Open Cast Sub Area vide Order No. WCL/MA/SAM/NMOC-II/PER/3/228 dated 12.06.2003 is legal and justified. The workman was not

entitled to any relief. As the workman was not entitled to any relief, his legal heirs are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 जून, 2014

का.आ. 1895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम. एन. आई. ऑफ टी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 54/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–42012/255/2005–आई. आर. (सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 24th June, 2014

S.O. 1895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Malviya National Institute of Technology, and their workmen, received by the Central Government on 24/06/2014.

[No. L-42012/255/2005 - IR(CM-II)]

B. M. PATNAIK, Desk Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 54/2006

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L-42012/255/2005–IR(CM-II)

दिनांक 17/08/2006

Shri Kailash Chand Meena S/o. Shri Samarth Lal,
R/o Vill., Post - Mohi,
Tehsil Baswa, Distt.- Dausa (Rajasthan)

V/s.

1. The Registrar,
Malviya National Institute of Technology,
Jawaharlal Nehru Marg,
Malviya Nagar,
Jaipur (Rajasthan)

प्रार्थी की तरफ से : श्री कैलाष चन्द कुम्भकार – एडवोकेट

अप्रार्थी की तरफ से : श्री लक्ष्मण सिंह कच्छावा – एडवोकेट

: पंचाट :

दिनांक : 16.04.2014

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 17.08.2006 के आदेष से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

2– "Whether the action of the management of Malaviya National Institute of Technology in terminating the service of Shri Kailash Chand Meena w.e.f. 4. 9. 2003 is legal and justified? If not, to what relief is the workman entitled?"

3. स्टेटमेन्ट ऑफ क्लेम के अनुसार संक्षिप्ततः प्रार्थी श्रमिक का कथन है कि वह अनुसूचित जनजाति का व्यक्ति है और सेकेण्डरी कक्षा पास है। उसकी नियुक्ति नियमित प्रकिया अपनाकर चतुर्थ श्रेणी कर्मचारी के पद पर विपक्षी ने की और दिनांक 02–12–02 से प्रार्थी ईमानदारी एवं पूर्ण लगन के साथ अपना कार्य नियमित रूप से मौखिक आदेष से रसायन विभाग में कर रहा था। विपक्षी ने प्रार्थी को कोई नियुक्ति पत्र नहीं दिया था।

4. विपक्षी यू.जी.सी. एक्ट की धारा –3 के अन्तर्गत एक डीम्ड विष्वविद्यालय है जिसको भारत सरकार, मानव संसाधन मंत्रालय द्वारा अपने नोटिफिकेषन के माध्यम से ग्रहण कर लिया गया है इस प्रकार संस्थान और कर्मचारियों व अधिकारियों पर भारत सरकार के नियम और प्राविधान लागू होते हैं।

5. प्रार्थी अपने कर्तव्यों का पालन पूरी निष्ठा एवं लगन से विपक्षी के संस्थान में कर रहा था एवं प्रार्थी की सेवायें सन्तोषजनक प्रकृति की थी। प्रार्थी विपक्षी संस्थान की पूर्ण रूप से नियमित सेवा में था तथा प्रार्थी का उपस्थिति पंजिका में हस्ताक्षर भी होता था। प्रार्थी ने दिनांक 02.12.02 से 3.9.2003 तक नियमित रूप से विपक्षी के संस्थान में काम किया और एक वर्ष में 240 दिन से अधिक काम किया।

6. विपक्षी के संस्थान में चतुर्थ श्रेणी कर्मचारी के कुल 36 पद स्वीकृत है और रसायन शास्त्र विभाग में चतुर्थ श्रेणी कर्मचारियों के 2 स्वीकृत पद हैं जिसमें से एक पद पर प्रार्थी पदस्थापित था और एक पद अभी भी रिक्त है विपक्षी द्वारा रिक्त पद को भरने के लिये कोई नियुक्ति नहीं की गयी है जबकि रिक्त पद स्थायी प्रकृति का स्वीकृत पद है।

7. प्रार्थी नियमित प्रकिया द्वारा चयनित कर्मचारी है परन्तु विपक्षी द्वारा दुर्भावना पूर्वक एवं मनमाने ढ़ंग से प्रार्थी की सेवायें अनुबन्ध के रूप में मानी जा रही है इसलिये प्रार्थी को न तो नियमित किया गया है और न ही नियमित वेतन श्रृंखला प्रदान की गयी।

प्रार्थी ने नियमित वेतन श्रृंखला प्रदान करने हेतु कई बार कहा जिससे विपक्षी नाराज होकर दुर्भावना पूर्वक एवं मनमाने ढ़ंग से प्रार्थी को दिनांक 4.9.2003 को सेवा से पृथक कर दिया।

8. आगे स्टेटमेन्ट ऑफ क्लेम में यह कहा गया है कि प्रार्थी को हटाने से पहले उसे न तो कोई नोटिस दी गई और न ही छंटनी का मुआवजा दिया गया और न ही बचाव एवं सुनवाई का मौका दिया गया, इस प्रकार विपक्षी ने प्राकृतिक एवं सामाजिक न्याय के सिद्धान्तों का उल्लंघन किया है। प्रार्थी द्वारा इससे पहले इस

मामले में अपर सिविल जज (क.ख.) पूर्व, जयपुर में इस प्रकरण में मुकदमा प्रस्तुत किया गया था लेकिन न्यायालय ने क्षेत्राधिकार न होने के कारण वापस कर दिया। विपक्षी संस्थान द्वारा दुर्भावना पूर्वक इस मामले में गैर कानूनी कार्य किया गया है। प्रार्थी ने समझौता अधिकारी के समक्ष अपना मामला प्रस्तुत किया था लेकिन विपक्षी की हठधर्मिता के कारण समझौता वार्ता विफल रही जिसके बाद न्याय–निणर्यन हेतु यह मामला न्यायाधिकरण के समक्ष आया है। प्रार्थी ने यह प्रार्थना कि है की उसकी सेवामुक्ति को अवैध घोषित कर नियुक्ति के दिनांक से उसकी सेवा को नियमित मानते हुए पूरा वेतन एवं परिलाभ दिलाया जाए तथा उसे सेवा में पुनर्स्थापित करने की कृपा की जाए।

9. विपक्षी मालवीय राष्ट्रीय प्रोद्योगिक संस्थान, जयपुर की तरफ से वादोत्तर प्रस्तुत का प्रारम्भिक आपत्ति में कहा गया है कि विपक्षी ने कार्य के सम्पादन हेतु सेवाओं की आवष्यकता के लिए किराये पर सेवायें लेने का एक कॉन्ट्रेक्ट किया हुआ था। दिनांक 27.2.2001 के आदेषानुसार वैधानिक तरीके से निविदायें आमंत्रित कर मैसर्स त्रिलोक सोल्जर एण्ड़ मैनपॉवर, शान्ति नगर, जयपुर को सेवायें प्रदान करने का कॉन्ट्रेक्ट दिया गया था। यह भी कहा गया है कि विपक्षी को अपने संस्थान में जिस किसी विभाग में जितने समय के लिए सर्विस की आवष्यकता होती थी उतने समय के लिए एक निष्चित धनराषि के बदले में आवष्यकतानुसार मैसर्स त्रिलोक सोल्जर एण्ड़ मैनपॉवर को विपक्षी आदेष देता था।

10. रसायन विभाग के लिये विपक्षी को एक चतुर्थ श्रेणी कर्मचारी, लेब अटेण्ड़ेन्ट की आवष्यकता थी जिसके लिए दिनांक 3.1.2002 को विपक्षी ने 1800 रू. प्रतिमाह के बदले में 3 माह की अवधि के लिए सेवा उपलब्ध कराने हेतु मैसर्स त्रिलोक सोल्जर एण्ड़ मैनपॉवर को आदेष दिया था जिसके अनुपालन में एक व्यक्ति की सेवा मैसर्स त्रिलोक सोल्जर एण्ड़ मैनपॉवर द्वारा उपलब्ध करायी गयी थी। इसी प्रकार रसायन विभाग में विपक्षी को जब भी आवष्यकता हुई तब त्रिलोक सोल्जर व मैनपॉवर ने लैब अटेण्डेन्ट की सेवा उपलब्ध करायी। विपक्षी ने कभी–भी प्रार्थी को अपने नियोजन में नहीं रखा और न ही उसको किसी प्रकार की नियुक्ति दी। प्रार्थी श्री कैलाषचन्द्र मीणा द्वारा गलत तथ्यों पर स्टेटमेन्ट ऑफ क्लेम प्रस्तुत किया गया है और उक्त कारण के आधार पर प्रथम दृष्टयता प्रार्थना–पत्र निरस्त होने योग्य है।

11. यह भी कहा गया है कि किसी भी संस्थान द्वारा स्वीकृत पद पर किसी व्यक्ति को नियमित नियुक्ति दिए जाने की एक प्रकिया होती है। विपक्षी संस्थान में भी स्वीकृत पदों पर नियुक्ति दिए जाने की नियमित प्रकिया है। प्रार्थी ने अपने स्टेटमेन्ट ऑफ क्लेम में यह उल्लेख नहीं किया है कि विपक्षी ने उसे नियुक्त करने के लिए कब विज्ञापन प्रकाषन कराया था और प्रार्थी ने कब आवेदन प्रस्तुत किया एवं परीक्षा हेतु प्रार्थी को विपक्षी द्वारा बुलावा कब भेजा गया और विपक्षी ने प्रार्थी को कब नियुक्ति आदेष भेजा। स्टेटमेन्ट ऑफ क्लेम में उक्त सूचनायें न होने से यह साफ जाहीर है कि प्रार्थी कभी–भी विपक्षी के अधीन नियमित नियुक्ति में नहीं रहा बल्कि प्रार्थी द्वारा तथ्यों को तोड़–मरोड़कर गलत तथ्यों के आधार पर प्रार्थना–पत्र प्रस्तुत किया गया है जो निरस्त होने योग्य है। यह भी कहा गया है कि स्टेटमेन्ट ऑफ क्लेम में मौखिक आदेष से नियुक्ति देने के तथ्य का उल्लेख किया गया है जो स्वंय प्रार्थी के कथन के विपरीत है कि नियमित प्रक्रिया अपनाकर चतुर्थ श्रेणी के पद पर उसे नियुक्ति दी गई क्योंकि नियमित प्रक्रिया अपना कर मौखिक नियुक्ति आदेष नहीं दिया जा सकता। अतः गलत तथ्यों के आधार पर प्रार्थी का प्रस्तुत प्रार्थना–पत्र निरस्त होने योग्य है।

12. प्रस्तरवार स्टेटमेन्ट ऑफ क्लेम के जवाब में विपक्षी ने प्रस्तर 1 के विरूद्ध यह उल्लेख किया है कि इसकी जवाब की आवष्यकता नहीं है। उल्लेखनीय है कि प्रस्तर 1 में श्रम मंत्रालय द्वारा निर्णय के लिए प्रेषित निर्देष है। प्रस्तर 2, 4, 5, 6, 7, 8, 9, 10 और 11 में प्रस्तुत कथन को गलत कहा गया है व अस्वीकार किया गया है। प्रस्तर 3 के सम्बन्ध में कहा गया है कि इस कथन के सम्बन्ध में कोई विवाद नहीं है अतिरिक्त कथन में यह कहा गया है कि वास्तविकता यह है कि प्रार्थी कभी–भी विपक्षी के नियोजन में नहीं रहा न ही विपक्षी ने प्रार्थी को अस्थायी, स्थायी, दैनिक वेतन–भोगी अथवा संविदा के आधार पर नियोजन में रखा था। चूकिं विपक्षी ने प्रार्थी को कभी कोई नियुक्ति नहीं दी तो उसे नियुक्ति–पत्र देने का कोई प्रष्न नहीं उठता। यह भी कहा गया है कि चूंकि प्रार्थी कभी विपक्षी के नियोजन में नहीं रहा इसलिये विपक्षी संस्थान के उच्चाधिकारीयों द्वारा उसकी सेवाओं को सराहने का प्रष्न नहीं उत्पन्न होता है।

13. आगे यह उल्लेख है कि विपक्षी ने किसी विषेष कार्य को पूरा करने के लिए या कार्य के सम्पादन हेतु सेवाओं की आवष्यकता के लिये किराये की सेवायें लेने का कॉन्ट्रेक्ट ''मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैन पावर 817, शान्ति नगर, गोपालपुरा बाईपास, दुर्गापुरा रेलवे स्टेषन के पास, जयपुर'' से किया हुआ था। कॉन्ट्रेक्ट दिनांक 27.2.2001 के आदेषानुसार मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर को दिये गया था। विपक्षी संस्थान के जिस विभाग में सर्विस की आवष्यकता होती थी उस के लिए मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर को आदेष दिया जाता था और यह सेवाएं एक निष्चित धनराषि के बदले में अस्थायी आवष्यकतानुसार जितने समय के लिए जरूरत होती थी उसके अनुसार प्राप्त की जाती थी। मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर को इसी कॉन्ट्रेक्ट के क्रम में कैमेस्ट्री विभाग में एक लैब अटेण्डेट (चतुर्थ श्रेणी कर्मचारी) के लिए दिनांक 3.1.2002 को आदेष दिया गया था जिसमें 1800 रू. प्रतिमाह की एवज में 3 माह के लिए सेवा उपलब्ध कराने के लिए आदेष दिया गया था। विपक्षी के आदेष दिनांक 3.1.2002 के अनुपालन में मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर ने एक सेवा उपलब्ध करायी थी। इसी प्रकार विपक्षी को जब भी आवष्यकता हुई तब कैमेस्ट्री विभाग में मैसर्स त्रिलोक सोल्जर्स एण्ड मैनपॉवर ने लैब अटेण्डेट (चतुर्थ श्रेणी कर्मचारी) की

सेवायें उपलब्ध करायी थी। चूंकि संविदात्मक आधार पर दी गई सर्विसेज में भुगतान, किये गये कार्य के संख्या के आधार पर दिया जाता था इसलिये उपस्थिति अंकित करने के उद्देष्य से प्रार्थी से रजिस्टर पर हस्ताक्षर कराया जाता था। रजिस्टर पर हस्ताक्षर कराये जाने मात्र से यह नहीं माना जा सकता कि प्रार्थी विपक्षी के यहां नियमित सेवा में था, इसी आधार पर प्रार्थी द्वारा एक वर्ष में 240 दिन से अधिक करने का कथन स्वतः गलत साबित हो जाता है।

14. वादोत्तर के प्रष्तर 6 में स्टेटमेन्ट ऑफ क्लेम के प्रष्तर 6 के विरूद्ध जवाब में यह कहा गया है कि विपक्षी के संस्थान में कितने पद रिक्त हैं तथा कितने कर्मचारियों की आवष्यकता है इस सम्बन्ध में निर्णय का सम्पूर्ण अधिकार विपक्षी संस्थान में निहित है जिसमें प्रार्थी को कोई हस्तक्षेप का अधिकार नहीं है और न ही संस्थान के निर्णयों में प्रार्थी हस्तक्षेप करने में सक्षम है क्योंकि वह संस्थान में कार्यरत नहीं है इसलिए रिक्त या नियमित पदों पर उसका कोई दावा नहीं बनता। प्रार्थी कभी भी विपक्षी के यहां अस्थायी, स्थायी, दैनिक वेतन भोगी अथवा संविदात्मक आधार पर विपक्षी के नियोजन में नहीं रहा है।

15. चूंकि प्रार्थी कर्मकार कभी–भी विपक्षी की सेवा में नहीं रहा इसलिये उसे सेवा से पृथक करने का प्रष्न नहीं उठता। इस सम्बन्ध में प्रार्थी कर्मकार का कथन मनगढ़ंत व असत्य है। यह भी कहा गया है कि चूंकि प्रार्थी को कभी विपक्षी ने नियुक्ति नहीं दी इसलिये हटाने के लिए नोटिस देने अथवा छंटनी का मुआवजा देने अथवा बचाव व सुनवाई का मौका देने का प्रष्न नहीं उठता। इस प्रकार विपक्षी द्वारा किसी प्राकृतिक व सामाजिक न्याय के सिद्धान्त का उल्लंघन करने का प्रष्न नहीं उठता है।

16. विपक्षी ने इस तथ्य को स्वीकार किया है कि प्रार्थी कर्मकार ने एक वाद अपर सिविल जज (क.ख.), पूर्व जयपुर, प्रस्तुत किया था जहाँ उसे कोई अनुतोष प्राप्त नहीं हुआ और उसने अपना दावा वापस ले लिया। यह भी कहा है कि विपक्षी संस्थान ने प्रार्थी कर्मकार के साथ कोई दुर्भावनापूर्ण व न्यायपूर्ण कार्य नहीं किया है। वह गलत तरीके से नियुक्ति प्राप्त करना चाहता है जिसका कोई आधार नहीं है। विपक्षी संस्थान द्वारा संविदा पर मैसर्स त्रिलोक सोल्जर्स एण्ड मैनपॉवर से सेवायें प्राप्त की जाती थी एवं उसके द्वारा किसी भी व्यक्ति को सेवा हेतु भेजा जाता था। सुलह वार्ता विपक्षी के हठधर्मिता के कारण नहीं बल्कि कर्मकार की हठधर्मिता के कारण विफल रही। अन्ततः यह उल्लेख किया गया है कि प्रार्थना–पत्र विषेष खर्चे के साथ निरस्त किया जाना चाहिये।

17. वादोत्तर के विरूद्ध जवाब–उल–जवाब प्रस्तुत कर याचिका में किये गये कथनों की पुनरावृत्ति की गयी है और विपक्षी के इस कथन के सम्बन्ध में अनभिज्ञता जाहिर की गयी है कि विपक्षी संविदा पर मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर से सेवाएं प्राप्त करता था।

18. प्रार्थी पक्ष की तरफ से सूची से अभिलेख, उपस्थिति पंजिका की फोटोप्रति जनवरी, 2002 से दिनांक 3.9.2003 तक प्रस्तुत है। इसके अतिरिक्त दो अलग–अलग सूची से अभिलेख डब्ल्यू–1 लगायत डब्ल्यू–8 प्रस्तुत है। उक्त अभिलेख के अतिरिक्त प्रार्थी कर्मकार श्री कैलाष चन्द्र मीणा की साक्ष्य में शपथ–पत्र प्रस्तुत है जिनकी विरूद्ध कर्मकार की प्रतिपरीक्षा विपक्ष द्वारा की गयी है।

19. विपक्ष की तरफ से श्री सवाई सिंह, केयर–टेकर की साक्ष्य में शपथ–पत्र प्रस्तुत की गयी है जिनकी प्रतिपरीक्षा प्रार्थी कर्मकार की तरफ से कि गयी है। विपक्ष की तरफ से प्रलेखीय साक्ष्य प्रदर्ष एन.ए.1 लगायत प्रदर्ष एन.ए.53 प्रस्तुत किया गया है जिसमें इकरारनामा, निविदा की शर्तें, ऑफिस ऑर्डर, मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर तथा विपक्ष के बीच पत्राचार एवं प्रार्थी कर्मकार की वेतन भुगतान से सम्बन्धित अभिलेख शामिल हैं।

20. उभयपक्ष द्वारा अपना साक्ष्य समाप्त किया गया है।

21. प्रार्थी कर्मकार की तरफ से प्रस्तुत विधिक दृष्टान्त : –

(1.) जे.टी.1996 (7) सुप्रीम कोर्ट पृष्ठ 181 सेन्ट्रल बैंक ऑफ इण्डिया – अपीलार्थी बनाम एस. सत्यम् एवं अन्य– प्रत्यर्थीगण

विपक्ष की तरफ से प्रस्तुत दृष्टांत : –

(1) (2001) 7 एस.सी.सी पृष्ठ –1, स्टील ऑथरिटी ऑफ इण्डिया लिमिटेड – अपीलार्थीगण बनाम नेषनल यूनियन वाटरफ्रान्ट वर्कर्स एवं अन्य– प्रत्यर्थीगण।

(2) (2004) 7 एस.सी.सी पृष्ठ –112, ए.उमरानी– अपीलार्थी बनाम रजिस्ट्रार, को ऑपरेटिव सोसायटीज और अन्य – प्रत्यर्थीगण।

(3) (2005) 1 एस.सी.सी पृष्ठ –639, महेन्द्र एल.जैन और अन्य–अपीलार्थीगण बनाम इन्दौर डेवलपमेंट अथारिटी और अन्य –प्रत्यर्थीगण

(4) (2005) 5 एस.सी.सी पृष्ठ –112, माध्यमिक षिक्षक परीषद, यू.पी.–अपीलार्थी बनाम अनिल कुमार मिश्रा और अन्य–प्रत्यर्थीगण

(5) (2006) 1 एस.सी.सी पृष्ठ –667, स्टेट ऑफ यू.पी.–अपीलार्थी बनाम नीरज अवस्थी और अन्य–प्रत्यर्थीगण

(6) (2008) 2 एस.सी.सी पृष्ठ –552, चन्द्र शेखर आजाद कृषि एवं प्रौद्योगिकी विष्वविद्यालय – अपीलार्थी बनाम यूनाइटेड़ ट्रेड्स कांग्रेस और अन्य– प्रत्यर्थीगण

22. मैनें उभयपक्ष के विद्वान अधिवक्ता की बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया। प्रार्थी कर्मकार के विद्वान अधिवक्ता के द्वारा यह बहस कि गयी है कि प्रार्थी कर्मकार विपक्षी के अधीन चतुर्थ श्रेणी कर्मचारी के रूप में नियुक्ति की नियमित प्रक्रिया के आधार पर नियुक्त होकर दिनांक 2.1.2002 से कार्यरत था और मौखिक आदेष से कैमेस्ट्री विभाग मे कार्य कर रहा था तथा दिनांक 4.9.2003 तक नियमित रूप से कार्य किया और प्रार्थी

कर्मकार द्वारा नियमित वेतन श्रृंखला प्रदान करने हेतु विपक्षी से कई बार कहा जिससे नाराज होकर विपक्षी ने मनमाने ढ़ंग से दुर्भावनापूर्वक दिनांक 4.9.2003 को सेवा से पृथक कर दिया। यह बहस भी कि गयी है कि प्रार्थी कर्मकार ने 240 दिन से अधिक कार्य किया है लेकिन सेवा से हटाने से पूर्व न तो उसे नोटिस दी गई और न ही कोई छंटनी का मुआवजा दिया गया, न बचाव व सुनवाई का अवसर प्रदान किया गया, अतः प्रार्थी कर्मकार की सेवामुक्ति गैरकानूनी है जिसे अवैध घोषित कर नियुक्ति की दिनांक से उसे नियमित मानते हुए पूरा वेतन एवं समस्त परिलाभ दिलाते हुए सेवा में पुर्नस्थापित किया जाय। विपक्षी के विद्वान अधिवक्ता की तरफ से यह बहस की गयी है कि प्रार्थी कर्मकार सीधे तौर पर विपक्षी की सेवा में कभी नियुक्त नहीं था और न ही कोई नियुक्ति प्रकिया अपनाकर उसे सेवा में लिया गया। यह बहस भी कि गयी है कि चूँकि प्रार्थी कर्मकार विपक्षी के अधीन सेवारत नहीं था इसलिये उसे विपक्षी द्वारा नियुक्ति देने अथवा सेवा से बर्खास्त करने का प्रष्न नहीं उठता है। यह बहस भी की गयी है कि विपक्षी की सेवा में प्रार्थी कर्मकार का न होने के कारण उसे सेवा से बर्खास्त करने से सम्बन्धित नोटिस देने या मुआवजा देने का भी प्रष्न नहीं उठता है। प्रार्थी कर्मकार द्वारा विपक्षी को दी गई सेवा के सम्बन्ध में यह बहस की गयी है कि मैसर्स त्रिलोक सोल्जर्स एण्ड मैनपॉवर से विपक्षी का सेवा प्रदान करने के सम्बन्ध में अनुबन्ध था और जब सेवा की आवष्यकता होती थी तो निर्धारित समय सीमा के लिए निविदा के आधार पर मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर से सेवा की मांग की जाती थी जो सेवा प्रदान करता था और इसी आधार पर उक्त संस्थान को विपक्ष द्वारा भुगतान कर दिया जाता था। प्रार्थी कर्मकार के सम्बन्ध मे बहस में यह कहा गया है कि कैमेस्ट्री विभाग में सेवा के लिए मैसर्स त्रिलोक सोल्जर्स एण्ड़ मैनपॉवर से मांग किये जाने पर उक्त संस्था ने प्रार्थी कर्मकार की सेवा 1800 रू. प्रतिमाह की एवज में प्रदान की थी। इस प्रकार प्रार्थी कर्मकार विपक्षी संस्थान से किसी भी प्रकार का याचित अनुतोष पाने का हकदार नहीं है।

23. सी.एस. आजाद कृषि एवं प्रौद्योगिकी विष्वविद्यालय बनाम यूनाइटेड़ ट्रेड कांग्रेस के मामले में प्रत्यर्थी दो दिनांक 01.07.1980 को रूपये 40 दैनिक वेतन भोगी के रूप में विष्वविद्यालय में नियुक्त हुआ था जिसने चतुर्थ श्रेणी कर्मचारी के रूप में 31.10.1991 तक लैब असिस्टेंट–कम–अटैन्डेन्ट के रूप में काम किया परन्तु 1.11. 1991 से उससे सहायक क्लर्क का काम लिया जाने लगा। प्रत्यर्थी, एक ट्रेड यूनियन ने प्रत्यर्थी दो की तरफ से औद्योगिक विवाद उठाया कि कर्मचारी की सेवायें विष्वविद्यालय द्वारा नियमित नहीं की गयी। औद्योगिक न्यायाधिकरण के समक्ष निर्णयार्थ यह प्रष्न था कि ''क्या विष्वविद्यालय ने कर्मचारी कल्याण सिंह (विपक्षी दो) को जो क्लर्क रूप में कार्यरत है, स्थायी कर्मचारी घोषित न कर अवैधानिकता कारित की है यदि हां तो क्या कर्मचारी द्वारा याचित अनुतोष अधिकारिक है एवं किस तारीख से एवं किस आधार पर ?''

24. औद्योगिक न्यायाधिकरण के विद्वान पीठासीन अधिकारी ने विवाद को प्रत्यर्थी दो के पक्ष में निर्णित कर निर्णय की तिथि 30.5.1998 से कर्मचारी को स्थायी घोषित करने तथा अनुगामी आर्थिक लाभ प्रदान करने के लिए निर्देषित किया।

25. न्यायाधिकरण के निर्णय के पूर्व माननीय उच्च न्यायालय ने कुछ अन्य कर्मचारियों तथा विष्वविद्यालय के बीच विवाद से सम्बन्धित एक रिट याचिका कर्मचारियों के पक्ष में विष्वविद्यालय के विद्वान अधिवक्ता की तरफ से प्रदत्त कुछ रियायत के आधार पर निर्णित की थी। न्यायाधिकरण ने जिन आधारों पर अपने समक्ष लम्बित उक्त विवाद निर्णित किया उसमें माननीय उच्च न्यायालय द्वारा निर्णित उक्त रिट याचिका का निष्कर्ष भी आधार था।

26. न्यायाधिकरण के निर्णय के विरूद्ध प्रस्तुत सिविल मुतफर्का रिट याचिका माननीय इलाहाबाद उच्च न्यायालय द्वारा निम्न प्रेक्षण के साथ निरस्त की गयी :–

"11. The University statute does not provide for appointment on daily wages or on an ad hoc basis. Respondent 2 in his written statement filed before the Industrial Court did not make any averment that he had been appointed in terms of the provisions of the statute or prior thereto any advertisement therefore was made. According to him, he being a hard working, honest, efficient and eligible employee, was "entrusted" with the work of a clerk from 1-11-1991. In his written statement, it was averred:

"5. That though the worker was working against a permanent vacant post as a clerk in a permanent manner, however, the employer is not giving him the actual scale of pay and other allowances and benefits as that of a permanent clerk. However, he is still considered as a daily wager in spite of having worked since last 14 years continuously, which is illegal and wrong."

"12. A feeble attempt, however, was made by the learned counsel appearing on behalf of Respondent 2 to state that he had been appointed against a permanent vacancy. In his written statement, he did not raise any such contention. It does not also appear from the records that any offer of appointment was given to him. It is inconceivable that an employee appointed on a regular basis would not be given an offer of appointment or shall not be placed on a scale of pay. We, therefore, have no hesitation in proceeding on the premise that Respondent 2 was appointed on daily wages.

The Industrial Court in passing the impugned award proceeded on the premise that Respondent 2 had been

working for more than 240 days continuously from the date of his engagement. It is now trite that the same by itself does not confer any right upon a workman to be regularized in service. Working for more than 240 days in a year was relevant only for the purpose of application of Section 6-N of the U.P. Industrial Disputes Act, 1947 providing for conditions precedent to retrench the workmen. In does not speak of acquisition of a right by the workman to be regularized in service."

27. माननीय सर्वोच्च न्यायालय के समक्ष अपील में कर्मचारी की तरफ से यह बहस की गयी कि चर्तुथ श्रेणी कर्मी के रूप में कर्मकार ने लैब असिस्टैन्ट के स्थायी रिक्त पद पर तथा तृतीय श्रेणी कर्मचारी के रूप में क्लर्क के स्थायी पद पर लम्बी अवधि तक सेवा की है, इस प्रकार औद्योगिक न्यायाधिकरण द्वारा पारित निर्णय आदेष न्यायाधिकरण की अधिकारिता के अन्दर है। प्रत्यर्थी की तरफ से यह भी बहस की गयी कि माननीय उच्च न्यायालय के आदेष से प्रत्यर्थी से कनिष्क कर्मचारी नियमित किये जा चुके थे अतः प्रत्यर्थी दो नियमितिकरण का हकदार था। निर्णय के विरूद्ध अपीलार्थी की तरफ से यह बहस की गयी कि नियुक्ति स्टेच्यूटरी (statutory) नियमों के विरूद्ध थी अतः अधिकरण द्वारा नियमितिकरण का निर्देष नहीं दिया जाना चाहिए था तथा अधिकरण घोषणात्मक व्यादेष की डिक्री पारित नहीं कर सकता। माननीय सर्वोच्च न्यायालय ने अपील स्वीकार की और यह अवधारित किया,''

"17. The Industrial Court, therefore, in our opinion, committed a serious error in passing the impugned award. The High Court unfortunately did not pose unto itself a right question. It referred to a large number of decisions. Although most of the decisions referred to by the High Court should have been applied for upholding the contention of the appellant herein, without any deliberation thereupon, the learned Judge has proceeded to determine the question posed before it on a wholly wrong premise. As noticed hereinbefore, it relied upon Mahendra L. Jain which in no manner assists Respondent 2.

18. What was necessary to be considered was the nature of work undertaken by the University. It undertakes projects. For the said purpose, it may have to employ a large number of persons. Their services had to be temporary in nature. Even for that the provisions of Articles 14 and 16 are required to be complied with. In the event, the constitutional and statutory requirements are not complied with, the contract of employment would be rendered illegal.

19. Services of Respondent 2 were not terminated. He has been continuing to serve the University. We have noticed hereinbefore that in a writ petition filed by other employees on a concession made by the counsel for the University, a purported scheme dated 24-4-2000 has been formulated. Dr. Padia in that view of the matter stated before us that of Respondent 2 comes within the purview of the said scheme, his services shall be regularized when his turn comes therefor.

20. We place on record the aforementioned statement made by Dr. Padia that as and when Respondent 2 becomes entitled to be considered for being absorbed in the services of the University pursuant to the said scheme, his case may be considered. If his turn for consideration for regularization has already come, a decision thereupon shall be taken as expeditiously as possible.

21. The impugned judgment is set aside. The appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of this case, there shall be no order as to costs."

28. माध्यमिक षिक्षा परिषद के विद्वान अधिवक्ता ने माननीय सर्वोच्च न्यायालय के समक्ष स्वेच्छया पर यह जाहिर किया कि अपीलार्थी माननीय उच्च न्यायालय के पूर्व में पारित निर्णय के अनुसार जब विष्वविद्यालय की सेवा में आमेलित करने के लिए हकदार हो जाता है तब उसके मामले पर विचार किया जा सकेगा। उक्त बहस को निर्णय का हिस्सा बनाते हुए माननीय सर्वोच्च न्यायालय ने अपील खारिज की।

29. माननीय सर्वोच्च न्यायालय ने उक्त दृष्टान्त से यह जाहिर है कि प्रार्थी/कर्मकार को उसके मामले में कोई अनुतोष न्यायाधिकरण द्वारा नहीं प्रदान किया जा सकता है क्योंकि उसकी स्थिति प्रत्यर्थीगण से बेहतर नहीं हैं एवं प्रार्थी साक्ष्य के अनुसार विपक्षी द्वारा कभी नियुक्त नहीं किया गया है।

30. माध्यमिक षिक्षा परिषद बनाम अनिल कुमार के मामले में प्रत्यर्थीगण को अपीलार्थी ने सन् 1986 में अपने यहां कार्य पर इस उद्देष्य से नियत पारिश्रमिक पर अनुबन्धित किया कि वे माध्यमिक षिक्षा परिषद के सफल परीक्षार्थियों के प्रमाण पत्र तैयार करेगें जो प्रमाण पत्र छपे हुए थे और उसमें सफल परीक्षार्थियों का विवरण भरना था। 100 प्रमाणपत्रों में विवरण भरने का पारिश्रमिक 12 रु. था जो बढ़ाकर 20 रु. कर दिया गया था। विगत एक–दो वर्षों के बकाया प्रमाण–पत्र भी प्रत्यर्थीगण द्वारा तैयार किये जा चुके थे जिसका समानुपातिक भुगतान किया गया था। भविष्य में प्रमाण–पत्रों की तैयारी का कार्य कम्प्यूटरीकृत हो जाने के कारण प्रत्यर्थीगण की सेवायें भविष्य में लगातार उपयोग योग्य नहीं रह गयी इसलिए समाप्त कर दी गयी।

31. सेवा समाप्ति के विरूद्ध प्रत्यर्थीगण ने रिट याचिकाएं प्रस्तुत की जिन्हें माननीय उच्च न्यायालय ने स्वीकार की जिससे क्षुब्ध होकर अपीलार्थी ने माननीय सर्वोच्च न्यायालय के समक्ष अपील प्रस्तुत की।

32. माननीय उच्च न्यायालय के समक्ष प्रत्यर्थीगण की तरफ से यह बहस की गयी कि वे आकस्मिक (casual) कर्मकार थे जिन्होंने 240 दिन सेवायें पूरी की थी। सफल परीक्षार्थियों का प्रमाण–पत्र तैयार करना अपीलार्थी का statutory obligation था, प्रत्यर्थीगण/

कर्मकारों की सेवा समाप्ति विधि विरूद्ध थी और वे सेवा में पुर्नस्थापना के हकदार थे। तद्नुसार माननीय उच्च न्यायालय ने रिट याचिकाएं स्वीकार की और बेंनस कर्मकार के रूप में प्रत्यर्थीगण को सेवा में पुर्नस्थापित करने के लिए निर्देषित किया एवं वेतन के सम्बन्ध में यह निर्देष दिया कि उन्हें वह पारिश्रमिक दिया जाय जो समान कार्य करने वाला नियमित कर्मचारी पाता है। माननीय उच्च न्यायालय ने यह भी निर्देष दिया कि प्रत्यर्थीगण को उनकी वरिष्ठता एवं शैक्षिक योग्यता के अनुसार दैनिक वेतन भोगी मजदूरी के आधार पर नियमित एल.डी.सी. के रूप में नियुक्त करने पर विचार किया जाय जब इस तरह के पद भरें जाय और उनकी सेवाएं तब तक न समाप्त की जाय जब तक सभी सेवा में नियमित कर्मचारी के रूप में समायोजित नहीं हो जाते।

33. माननीय सर्वोच्च न्यायालय ने अपील स्वीकार की और निर्णय के प्रष्स्तर 5 में अवधारित किया,

"5. We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of the provision of 240 days' work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days, work does not, under that law import the right to regularization. It merely imposes certain obligation on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here."

34. माननीय सर्वोच्च न्यायालय द्वारा उक्त दृष्टान्त की व्यवस्था से यह स्पष्ट है कि प्रत्यर्थीगण सीधे अनुबन्ध पर अपीलार्थी द्वारा अनिष्चित अवधि के लिए नियुक्त थे फिर भी उनकी सेवायें उन्हें सेवा में वापस लिये जाने के लिए पर्याप्त नहीं मानी गयी क्योंकि उनकी नियुक्ति वैधानिक तरीके से नहीं की गयी थी, अतः वर्तमान मामले में उक्त विधि व्यवस्था को दृष्टिगत रख प्रार्थी कैलाष चन्द्र मीना को याचित अनुतोष प्रदान नहीं किया जा सकता है।

35. जहॉ तक याचिका में प्रस्तुत तथ्यों के आधार पर याची को याचित अनुतोष प्रदान किये जाने का प्रष्न है एवं याची की सेवा समाप्ति विधिक संगत और विधि द्वारा न्यायानुमत पाये जाने का प्रष्न है इस सम्बन्ध में प्रार्थी की नियुक्ति की प्रकृति के सम्बन्ध में पक्षकारों द्वारा प्रस्तुत किये गये साक्ष्यों की व्याख्या प्रासंगिक है। पक्षकारों के अभिवचनों के यह जाहिर है कि दावे के प्रस्तर 2 में प्रार्थी ने यह उल्लेख किया है कि उसकी नियुक्ति विपक्षी ने नियुक्ति की नियमित प्रकिया अपनाकर चतुर्थ श्रेणी कर्मचारी के पद पर की थी और दिनांक 2.1.2002 से वह अपना कार्य नियमित रूप से कर रहा था। प्रस्तर 2 में ही प्रार्थी ने यह उल्लेख भी किया है कि विपक्षी के मौखिक आदेष से वह रसायन विभाग में चतुर्थ श्रेणी कर्मचारी के पद पर कार्य कर रहा था और नियुक्ति पत्र नहीं दिया था विपक्षी द्वारा अपने वादोत्तर में उक्त कथन का प्रबल खण्ड़न किया है और यह कहा गया है कि प्रार्थी कभी भी विपक्षी की नियुक्ति में नहीं रहा और इस सम्बन्ध में प्रार्थी ने अपने दावे में कोई उल्लेख नहीं किया कि सम्बन्धित पद के लिए कब विज्ञापन हुआ था और उसने कब आवेदन किया, परीक्षा के लिए उसे कब बुलावा पत्र भेजा गया और कब उसे नियुक्ति दी गई प्रार्थी कि तरफ से प्रस्तुत अभिलेखीय साक्ष्य में विज्ञापन परीक्षा के लिए बुलावा पत्र, आवेदन पत्र अथवा नियुक्ति पत्र से सम्बन्धित कोई अभिलेख प्रस्तुत नहीं है। प्रार्थी द्वारा साक्ष्य में प्रस्तुत शपथ–पत्र के प्रस्तर 1 में यह कहा गया है कि उसे कोई नियुक्ति पत्र नहीं दिया गया था। दावे के प्रस्तर 2 में प्रार्थी ने नियमित नियुक्ति प्रकिया अपनाकर चतुर्थ श्रेणी कर्मचारी के पद पर विपक्षी द्वारा नियुक्ति किये जाने का जो उल्लेख किया गया है उस सम्बन्ध में प्रार्थी कि विपक्ष द्वारा प्रतिपरीक्षा की गयी है। अपनी प्रतिपरीक्षा में प्रार्थी ने इस सम्बन्ध में स्वीकार किया है कि चतुर्थ श्रेणी कर्मचारी के लिए अखबार में विज्ञप्ति निकाले जाने की जानकारी उसे नहीं है और स्वयं यह उल्लेख किया है कि उसकी नियुक्ति से सम्बन्धित विज्ञप्ति संस्थान के नोटिस बोर्ड पर दी गई थी। नोटिस बोर्ड पर विज्ञप्ति लगने की जानकारी प्रार्थी को कैसे मिली इस सम्बन्ध में प्रार्थी ने प्रतिपरीक्षा में यह उल्लेख किया है कि प्रार्थी के साईड़ के लड़के संस्थान में काम करते थे उन्होनें नोटिस बोर्ड पर लगी विज्ञप्ति कि जानकारी प्रार्थी को दी थी। फार्म भरने के सम्बन्ध में प्रार्थी ने यह उल्लेख किया है कि उसे संस्थान की तरफ से आवेदन पत्र दिया गया था जिसको भरकर उसे संस्थान में प्रस्तुत किया था लेकिन संस्थान के द्वारा साक्षात्कार हेतु उसे कोई पत्र नहीं भेजा गया था। आगे प्रार्थी साक्षी ने प्रतिपरीक्षा में यह उल्लेख किया है कि उसे लिखित रूप में कोई नियुक्ति पत्र नहीं दिया गया था और यह स्वीकार किया है कि जो उसने क्लेम प्रस्तुत किया वह पढ़ने और समझने के बाद पेष किया है और साक्ष्य में प्रस्तुत शपथ–पत्र भी पढ़कर और समझकर पेष किया है। दावे के प्रस्तर 2 में नियमित प्रकिया अपनाकर नियुक्ति होने का जो उल्लेख है उसे प्रार्थी के समक्ष प्रतिपरीक्षा के दौरान रखा गया है तो साक्षी ने कहा है कि सही लिखा है कि नियमित प्रकिया अपनाकर विपक्ष द्वारा नियुक्त किया गया है। दावे के प्रस्तर 2 में अंग्रेजी के अक्षर A व B के बीच नियुक्ति की प्रकिया के सम्बन्ध में जो इबारत लिखी गयी है उसके सम्बन्ध में प्रार्थी ने यह कहा है कि वहां जगह खाली थी तथा उसे वहां खाली जगह पर लगा दिया था। प्रार्थी की तरफ से नोटिस बोर्ड़ के विज्ञापन के सम्बन्ध में जानकारी होने के सम्बन्ध में साक्ष्य में जो उल्लेख किया गया है उसके समर्थन में प्रार्थी ने किसी व्यक्ति को साक्ष्य में प्रस्तुत नहीं किया है जो उसके गॉव की तरफ के निवासी थे और संस्थान में कार्यरत थे, अतः विज्ञापन से सम्बन्धित जानकारी के सम्बन्ध में जो कथन साक्षी ने प्रस्तुत किया वह उसकी कपोलकल्पना जाहिर होती है। प्रार्थी द्वारा स्वंय इस तथ्य को स्वीकार करना कि साक्षात्कार के लिये उसे संस्थान से कोई बुलावा पत्र नहीं भेजा गया था इस बात को

प्रमाणित करता है कि वह संस्थान में कभी भी चतुर्थ श्रेणी कर्मचारी के पद पर साक्षात्कार के लिए उपस्थित नहीं हुआ ऐसी स्थिति में संस्थान द्वारा उसको नियुक्ति दिये जाने का प्रष्न नहीं उठता है। जहां तक मौखिक आदेष से नियुक्ति दिये जाने का प्रष्न है जिसका उल्लेख दावे के प्रस्तर 2 में है यह बात स्वयं स्वीकार किये जाने योग्य नहीं है क्योंकि विपक्षी संस्थान भारत सरकार द्वारा संचालित शैक्षणिक संस्थान है जहां किसी व्यक्ति को मौखिक रूप से नियुक्ति देने का अधिकार उपलब्ध नहीं रहता है। जहॉ तक विपक्षी द्वारा इस सम्बन्ध में प्रस्तुत कथन से सम्बन्धित साक्ष्य का प्रष्न है इस सम्बन्ध में उल्लेखनीय है कि विपक्षी द्वारा यह कहा गया है कि मैसर्स त्रिलोक सोल्जर्स एवं मैनपॉवर तथा विपक्ष के बीच दिनांक 27.2.2001 के अनुबन्ध के अनुसार 1800/– रू. प्रतिमाह के बदले में एक लैब अटैण्डेट (चतुर्थ श्रेणी कर्मचारी) की सेवा उपलब्ध कराने के लिए दिनांक 3.1.2002 को आदेष दिया गया था जिसके आधार पर उक्त संस्था ने प्रार्थी की सेवा उपलब्ध करायी थी।

36. विपक्षी संस्थान के केयर टेकर श्री सवाई सिंह ने प्रतिपरीक्षा में कहा है कि एमएनआईटी द्वारा ठेके पर कार्य दिये जाने के सम्बन्ध में अन्दाजन 2001 में निविदा निकाली गई थी लेकिन निविदा को साक्षी ने पत्रावली पर प्रस्तुत नहीं किया है पृष्ठ 2 पर प्रतिपरीक्षा में साक्षी ने कहा है कि मैसर्स त्रिलोक सोल्जर्स और मैनपॉवर और एमएनआईटी के मध्य 2001 में समझौता हुआ था जो प्रदर्ष–1 है जो मूल की फोटोप्रति है और मूल प्रति संस्थान में है। प्रार्थी श्री कैलाष चन्द्र मीणा के विद्वान अधिवक्ता की तरफ से यह बहस की गयी है कि पत्रावली पर प्रस्तुत इकरारनामा साक्ष्य में ग्रहणीय नहीं है क्योंकि पंजीकृत नहीं है और नोटरी द्वारा भी सत्यापित नहीं है। इस सम्बन्ध में उल्लेखनीय है कि अभिलेख प्रदर्ष ए. एन.– 1 इकरारनामा को अभिलेखिय साक्ष्य में पढ़े जाने या ग्रहण किये जाने के सम्बन्ध में जो विधिक कमी है इस कमी से याची पक्ष को कोई लाभ प्रदान नहीं किया जा सकता जो विधि की सुस्थापित व्यवस्था है और याची पक्ष को स्वंय अपने अभिलेखीय और मौखिक साक्ष्य में यह साबित करना है कि याची विपक्षी के यहां नियमित प्रक्रिया अपनाये जाने के उपरान्त चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्त किया गया था जिसे याची साबित नहीं कर सका है। इसके विरूद्ध विपक्षी साक्षी श्री सवाई सिंह की तरफ से साक्ष्य में प्रस्तुत शपथ–पत्र के प्रस्तर 3 में यह उल्लेख किया गया है कि मैसर्स त्रिलोक सोल्जर्स और मैनपॉवर ने श्री कैलाष चन्द्र मीणा की सेवा निविदा के आधार पर 1800 रू. प्रतिमाह पर संस्थान के आदेष दिनांक 3.1.2002 के अनुसार उपलब्ध करायी थी तथा प्रस्तर 4 में यह उल्लेख किया है कि अप्रार्थी संस्थान द्वारा श्री कैलाष चन्द्र मीणा को कभी भी नियुक्ति नहीं दी गई और न ही संस्थान द्वारा रसायन विभाग में लैब अटैण्डेट (चतुर्थ श्रेणी कर्मचारी) के लिये कोई विज्ञप्ति प्रकाषित की गई और न कोई साक्षात्कार लिया गया और न कोई नियुक्ति दी गई और न ही श्री कैलाष चन्द्र मीणा को संस्थान द्वारा कोई वेतन दिया गया। प्रतिपरीक्षा के सम्यक एवं सूक्ष्म अवलोकन से यह जाहिर है कि विपक्षी के शपथ–पत्र के प्रस्तर 3 व 4 में दिये गये उक्त तथ्य के विरूद्ध कोई प्रतिपरीक्षा नहीं की गयी इससे इस बिन्दु को बल मिलता है कि विपक्षी संस्थान में श्री कैलाष चन्द्र मीणा प्रार्थी की सेवा मैसर्स त्रिलोक सोल्जर्स और मैनपॉवर के माध्यम से प्राप्त हुई थी। विपक्ष की तरफ से प्रस्तुत अभिलेख प्रदर्ष ए.एन.–40 लगायत ए.एन.– 53 ऐसे अभिलेख है जो विपक्ष द्वारा साक्ष्य में प्रस्तुत शपथ–पत्र का अंग है जिसमें अन्य लोगों के साथ–साथ श्री कैलाष चन्द्र मीणा को मासिक भुगतान के रूप में 1800 रू. प्रतिमाह की दर से मार्च 2002 से मार्च 2003 और जुलाई 2003 के लिये किये गये भुगतान का विवरण है जो फोटोप्रतियां है और मैसर्स त्रिलोक सोल्जर्स और मैनपॉवर द्वारा तैयार की गयी दषार्यी गयी हैं। श्री कैलाष चन्द्र मीणा ने जो भुगतान प्राप्त किया है उसके समर्थन में अपने नाम के समक्ष रसीदी टिकट पर भुगतान प्राप्त करने के हस्ताक्षर किये है। माह अप्रैल 2003, मई 2003 और जून 2003 के भुगतान से सम्बन्धित विवरण नहीं है इन अभिलेखों से यह जाहिर है कि श्री कैलाष चन्द्र मीणा की सेवा विपक्ष द्वारा ठेके पर प्राप्त की गयी है और इन अभिलेखों से प्रार्थी का यह कथन गलत साबित होता है कि उसकी नियुक्ति विपक्ष द्वारा लैब अटैण्डेट (चतुर्थ श्रेणी कर्मचारी) के पद पर नियमित प्रक्रिया अपनाकर की गयी थी तथा याचिका में नियमित प्रक्रिया अपनाकर नियुक्त होने के सम्बन्ध में प्रस्तर 1 में जो उल्लेख प्रार्थी ने किये है उसे सिद्ध नहीं कर सका है।

37. जहॉ तक प्रार्थी के सन्दर्भ में धारा 25 (एफ) औद्योगिक विवाद अधिनियम के प्रावधान लागू होने का प्रष्न है इस सन्दर्भ में उल्लेखनीय है कि विपक्ष की तरफ से यह कहा गया है कि संविदात्मक आधार पर कॉन्ट्रेक्ट द्वारा प्रार्थी की सेवा उपलब्ध करायी गयी थी और प्रार्थी की उपस्थिति के दिनों की जानकारी के लिए रजिस्टर में हस्ताक्षर करवाया जाता था इसलिये मात्र हस्ताक्षर करवाये जाने के आधार पर यह नहीं कहा जा सकता कि प्रार्थी विपक्ष के यहां नियमित सेवा में था और वास्तव में प्रार्थी कभी भी विपक्षी के नियोजन में नहीं था। इसके विरूद्ध प्रार्थी के विद्वान अधिवक्ता द्वारा न्यायालय का ध्यान औद्योगिक विवाद अधिनियम की धारा 2 (जी) की तरफ आकृष्ट किया गया और यह बहस की गयी कि राजस्थान राज्य द्वारा ''नियोजक'' की परिभाषा में संषोधन कर ठेकेदार को भी शामिल किया गया है इसलिये प्रार्थी को विपक्षी के नियोजन में माना जाना चाहिए और इस आधार पर औद्योगिक विवाद अधिनियम के प्राविधान प्रार्थी के सन्दर्भ में लागू होते है। इस सन्दर्भ में उल्लेखनीय है कि यह तथ्य निर्विवाद है कि प्रार्थी विपक्षी की नियमित सेवा में नहीं है और नियमित तौर से नियुक्त भी नहीं किया गया है

ऐसी स्थिति में प्रार्थी की सेवा शर्तों का नियन्त्रण उस अनुबन्ध पर आधारित होगा जो संविदा के अनुसार मैसर्स त्रिलोक सोल्जर्स एण्ड. मैनपॉवर तथा विपक्षी संस्थान के बीच हुई थी। विपक्ष द्वारा प्रस्तुत अभिलेख प्रदर्ष ए.एन.–4 दिनांकित 3.1.2002 से जाहिर है कि रसायन विभाग के लिये 3 माह हेतु 1800 रू. प्रतिमाह की दर से एक व्यक्ति की सेवा प्रदान करने के लिये

संस्तुति विपक्षी संस्थान द्वारा उपरोक्त ठेकेदार संस्था को प्रदान की गयीं। इसी प्रकार उन्हीं शर्तों पर दिनांक 6.4.2002 को प्रदर्ष ए.एन.–5, द्वारा 3 माह के लिये, प्रदर्ष ए.एन.–7 द्वारा दिनांक 27.3.2003 को 3 माह के लिये, और दिनांक 2.4.2003 को उन्हीं शर्तों पर 3 माह के लिये रसायन विभाग में एक व्यक्ति की सेवा उपलब्ध कराने का निर्देष ठेकेदार को विपक्षी संस्थान द्वारा दिया गया है। प्रदर्ष ए.एन. –10 लगायत ए.एन. 39 ठेकेदार द्वारा दी गई सेवाओं के लिये प्रस्तुत बिल और विपक्ष द्वारा चेक के माध्यम से किये गये भुगतान से सम्बन्धित विवरण की फोटोप्रतियां है और ए.एन.– 40 लगायत प्रदर्ष ए.एन.–53 रसीदी टिकट पर भुगतान किये जाने का विवरण है। प्रदर्ष ए.एन.–39 विपक्षी संस्थान के निबन्धक द्वारा ठेकेदार को निर्गत पत्र है जिसमें यह सूचना दी गयी है कि ठेकेदारी के माध्यम से प्रदत्त की जा रही सेवायें दिनांक 29.11.2003 से समाप्त की जा रही है और तब तक दी गई सेवा के सम्बन्ध में ठेकेदार बिल प्रस्तुत कर सकते है। उक्त पत्र प्रदर्ष ए.एन.–39 से इस तथ्य की पुष्टि होती है कि प्रार्थी का यह कहना गलत है कि दिनांक 4.9.2003 को विपक्ष द्वारा प्रार्थी की सेवायें विपक्ष द्वारा नाराज होकर समाप्त कर दी गयी क्योंकि प्रार्थी ने विपक्षी से नियमित वेतन श्रृंखला की मांग कर दी थी। प्रार्थी के सन्दर्भ में प्रदर्ष ए.एन.–8 रसायन विभाग के लिये पत्रावली पर उपलब्ध अन्तिम आदेष है जिसके अनुसार दिनांक 8.4.2003 से 3 माह की अवधि के लिये 1800 रू. प्रतिमाह की दर से एक व्यक्ति की सेवा उपलब्ध कराने का आदेष है जिससे यह विदित होता है कि दिनांक 8.4.2003 से 8.7.2003 तक के लिये रसायन विभाग को सेवा उपलब्ध कराने के लिये ठेकेदार अधिकृत था। श्री सवाई सिंह विपक्षी साक्षी ने प्रार्थी की हाजरी से सम्बन्धित प्रदर्ष डब्ल्यू 9 हाजरी रजिस्टर की फोटोप्रति के सम्बन्ध में यह उल्लेख किया है कि प्रदर्ष डब्ल्यू–9 रसायन विभाग से सम्बन्धित अभिलेख है जिस पर रसायन विभाग के कर्मचारियों के हस्ताक्षर है लेकिन प्रार्थी को वेतन भुगतान संस्थान द्वारा नहीं किया जाता था बल्कि ठेकेदार श्री भवर सिंह भुगतान करता था तथा हाजरी भी ठेकेदार भेजता था। उक्त प्रलेखिय व मौखिक साक्ष्य से यह जाहिर है कि प्रार्थी की सेवा मैसर्स त्रिलोक सोल्जर्स एण्ड़ एवं मैनपॉवर के द्वारा उपलब्ध करायी जाती थी जिसके लिये समय–समय पर संस्थान द्वारा निर्देष दिया जाता था, अतः स्वाभाविक रूप से प्रार्थी की सेवा का संचालन संविदा की शर्तों के अनुसार नियन्त्रित होगी। प्रार्थी के सन्दर्भ में दिनांक 8.7.2003 तक ही सेवा प्रदान करने का आदेष प्रभावी है। उसके बाद की अवधि के लिए सेवा लेने का कोई आदेष नहीं है फिर भी प्रार्थी के कथनानुसार दिनांक 3.9.2003 तक उसने सेवा की है, अतः ठेकेदार को दिनांक 4.9.2003 के बाद संस्थान द्वारा संविदा के आधार पर सेवा विस्तार न दिये जाने के कृत्य को विधि विरूद्ध नहीं कहा जा सकता है। प्रार्थी की तरफ से प्रदर्ष डब्ल्यू 4 अभिलेख के आधार पर यह बहस की गयी है कि लैब अटैण्डेट (चतुर्थ श्रेणी कर्मचारी) का पद खाली है इसलिये प्रार्थी सेवा में लिये जाने के लिये अधिकृत है। इस सन्दर्भ में उल्लेखनीय है कि प्रदर्ष डब्ल्यू–4 अभिलेख रजिस्ट्रार के कार्यालय से तैयार किया गया अभिलेख है जिसमें संस्थान में कर्मचारियों की तत्कालिक संख्या की स्थिति का विवरण है और इसमें उन कर्मचारियों का भी विवरण अंकित है जिन्हें माननीय उच्च न्यायालय द्वारा स्थगन प्राप्त है। सूची के तैयार होने की तिथि स्पष्ट नहीं है। इस सूची के आधार पर किसी रिक्त पद को प्रार्थी के लिये विधिक रूप से आरक्षित पद की संज्ञा नहीं दी जा सकती और इस सम्बन्ध में माध्यमिक षिक्षा परिषद उत्तर प्रदेष बनाम अनिल कुमार मिश्रा एवं अन्य एवं चन्द्रषेखर आजाद कृषि एवं प्रोद्योगिकी विष्वविद्यालय बनाम यूनाइटेड ट्रेडस कांग्रेस एवं अन्य तथा उत्तर प्रदेष राज्य बनाम नीरज अवस्थी मे माननीय सर्वोच्च न्यायालय द्वारा दी गई विधि व्यवस्था पूर्ण रूप से लागू होती है जिसके अनुसार अवैध तरीके से की गयी नियुक्तियों को नियमित नहीं किया जा सकता। प्रार्थी की संस्थान द्वारा अपने यहां कोई वैधानिक नियुक्ति नहीं की गयी है अतः प्रार्थी को सेवा में वापस लिये जाने का हक प्राप्त नहीं है। प्रार्थी को यह हक भी प्राप्त नहीं है कि अगर उसके 240 दिन की नियमित सेवा भी कर ली है इसलिये उसे विपक्षी कि सेवा में नियमित कर्मचारी के रूप में रखा जाय जैसा कि सर्वोच्च न्यायालय ने चन्द्रषेखर आजाद कृषि एवं प्रोद्योगिकी विष्वविद्यालय बनाम यूनाइटेड ट्रेडस कांग्रेस एवं अन्य में अवधारित किया है।

38. प्रार्थी पक्ष की तरफ से अपने समर्थन में प्रस्तुत विधिक दृष्टान्त सेन्ट्रल बैंक ऑफ इन्डिया बनाम एस.सत्यम् एवॅ अन्य के मामले में माननीय सर्वोच्च न्यायालय के समक्ष यह प्रष्न विचारणीय था कि क्या धारा 25 (एच) औद्योगिक विवाद अधिनियम के अन्तर्गत छटनीषुदा कर्मकार की अपेक्षित पुनः नियुक्ति केवल उन्हीं कर्मचारियों तक सीमित है जो धारा 25 (एफ) से आच्छादित है जिन्होनें एक वर्ष से अत्यधिक सेवा की है। इस मामले में स्वीकार्य रूप से प्रत्यर्थीगण ने एक वर्ष से भी कम अवधि तक अपीलार्थी के यहॉ सेवा की थी इसलिए धारा 25 (एफ) के प्राविधान से वे आच्छादित नहीं थें। प्रत्यर्थीगण 1974 और 1976 के बीच अल्प अवधि के लिये नियुक्त थे। सन् 1982 में उन्होनें अपनी सेवा से मुक्ति के विरूद्ध रिट याचिका माननीय उच्च न्यायालय में प्रस्तुत की जो स्वीकार की गयी जिससे क्षुब्ध होकर अपीलार्थी बैंक ने माननीय सर्वोच्च न्यायालय के समक्ष अपील प्रस्तुत की। अपीलार्थी की तरफ से माननीय सर्वोच्च न्यायालय के समक्ष माननीय उच्च न्यायालय के निर्णय को चुनौती देते हुए यह बहस की गयी कि धारा 25 (एच) अधिनियमित करने का उद्देष्य यह था कि उन लोगों को पुनर्नियुक्ति मिल सके जो धारा 25 (एफ) से आच्छादित है अर्थात एक वर्ष से अत्यधिक अवधि की सेवा जिन्होंने की है लेकिन प्रत्यर्थीगण उस श्रेणी के कर्मचारी नहीं है क्योंकि उन्होने एक वर्ष से कम अवधि की सेवा की है इस प्रकार अकेले यह आधार प्रत्यर्थीगण पर धारा 25 (एच) लागू न करने के लिए पर्याप्त है। यह बहस भी की गयी प्रत्यर्थीगण जो 1974 से 1976 के बीच थोड़ी–थोड़ी अवधि के लिए नियुक्त थे तथा याचिका भी 1982 में प्रस्तुत की, अतः विलम्ब के आधार पर भी माननीय उच्च न्यायालय द्वारा प्रदत्त अनुतोष न्यायपूर्ण नहीं है तथा इससे उन कर्मचारियों पर भी प्रतिकूल प्रभाव पड़ेगा जो पक्षकार नहीं है तथा मध्यवर्ती अवधि के बीच नियुक्त हुए है। प्रत्यर्थीगण की तरफ से यह बहस

की गयी कि धारा 2 (औ.औ) में ''छटनी'' की व्यापक परिभाषा दी गयी है जो धारा 25 (एफ) के प्रभाव से सीमित नहीं की जा सकती है तथा धारा 25 (एफ) सभी छटनीषुदा कर्मचारियों का मामला आच्छादित नहीं करती है एवं धारा 25 (एच) की व्यवस्था ऐसी कोई सीमा निर्धारित नहीं करनी है कि केवल धारा 25 (एफ) से आच्छादित कर्मचारी पर ही धारा 25 (एच) का प्राविधान लागू होगा।

39. निर्णय के प्रस्तर 8 में माननीय सर्वोच्च न्यायालय ने अवधारित किया, ".....It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category because of not being covered by Section 25-F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available Application of Section 25-H to the other retrenched workmen not covered by Section 25-F does not, in any manner, prejudice those covered by Section 25-F because the question of consideration of any retrenched workman not covered by Section 25-F would arise only, if and when, no retrenched workman covered by Section 25-F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in Section 25-H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect. इस मामले में याचिका विलम्ब से प्रस्तुत होने के कारण माननीय सर्वोच्च न्यायालय ने अपील स्वीकार की और यह अवधारित किया कि विलम्ब से रिट याचिका की प्रस्तुति इसे अस्वीकार करने के लिए पर्याप्त थी।

40. याची के सन्दर्भ में उक्त दृष्टान्त से कोई मदद नहीं ली जा सकती है क्योंकि उसकी सेवायें विपक्ष से सेवा विस्तार न पाये जाने के कारण ठेकेदार द्वारा समाप्त की गयी है तथा प्रार्थी स्वंय विपक्षी द्वारा की गयी नियमित नियुक्ति का हिस्सा नहीं है जिसे छंटनी का अनुगामी लाभ दिया जा सकें।

41. जहॉ तक सेवामुक्ति से पूर्व धारा 25 (एफ) के अनुपालन का प्रष्न है इस सन्दर्भ में सुरेन्द्र नगर, जिला पंचायत – अपीलार्थी बनाम दह्याभाई अमर सिंह – प्रत्यर्थी में दी गयी विधि व्यवस्था उल्लेखनीय है जिसमें माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि कर्मकार द्वारा न्यायालय से अनुतोष पाने के लिए उसे यह सिद्ध करना आवष्यक है कि उसे सेवा में बने रहने का अधिकार प्राप्त है तथा उसे धारा 25 (एफ) की सुरक्षा एवं अनुपालन का अधिकार था ?

42. धारा 25 (एफ) में दी गयी व्यवस्था के अनुसार किसी नियोक्ता के अधीन जिस कर्मचारी ने धारा 25 (2) (a) (i) के अनुरूप एक वर्ष अवधि की अविच्छिन्न सेवा कर ली है उसकी छटनी 25 (एफ) में दी गयी प्रक्रिया का पालन किये बिना नहीं की जा सकती है। इस सम्बन्ध में 2006, सुप्रीम कोर्ट (एल.एण्ड एस.), 38 में माननीय सर्वोच्च न्यायालय द्वारा दी गयी विधि व्यवस्था उल्लेखनीय है।

43. 2006 सुप्रीम कोर्ट (एल.एण्ड एस.), 38, सुरेन्द्र नगर जिला पंचायत – अपीलार्थी बनाम दह्याभाई अमर सिंह – प्रत्यर्थी में प्रकरण के तथ्यानुसार प्रत्यर्थी की सेवा 15.8.85 के आदेष से समाप्त कर दी गयी थी। सेवा समाप्ति के लगभग सात साल बाद दिनांक 01.6.92 को प्रत्यर्थी ने अपीलार्थी को सेवा में पुनर्स्थापना की नोटिस भेजी और अन्ततः प्रत्यर्थी की सेवा समाप्ति का विवाद न्यायनिर्णयन हेतु औद्योगिक न्यायाधिकरण को सुपुर्द किया गया।

44. प्रत्यर्थी ने अपने स्टेटमेन्ट ऑफ क्लेम में यह उल्लेख किया कि वह सेवा समाप्ति के आदेष दिनांक 15.8.85 तक 10/– रूपये दैनिक मजदूरी पर अपीलार्थी की सेवा में था एवं सेवा समाप्ति के आदेष निर्गत होने के पूर्व औद्योगिक विवाद अधिनियम के प्राविधानों का पालन नहीं किया गया। श्रम न्यायालय के समक्ष प्रत्यर्थी की तरफ से एक आवेदन अपीलार्थी को निर्देष जारी करने के लिए प्रस्तुत हुई कि अपीलार्थी 1976 से 1986 तक की सेवा अवधि का वेतन रजिस्टर एवं मस्टर रोल प्रस्तुत करें। अपीलार्थी ने स्टेटमेन्ट ऑफ क्लेम के विरूद्ध यह कथन प्रस्तुत किया कि प्रत्यर्थी स्वंय काम पर आना बन्द कर दिया एवं उसे कोई स्थायी नियुक्ति नहीं दी गयी थी। वह मुतफर्का कार्यों के लिए नियुक्त था तथा जब काम होता था तो उसे बुला लिया जाता था। यह भी कहा गया कि कर्मचारी ने सेवासमाप्ति के ठीक पूर्व पूर्ववर्ती 12 माहों में 240 दिन तक लगातार कार्य नहीं किया है। यह भी कहा गया कि उसने सन् 82, 83 और 84 में क्रमषः 114, 63 और 124 दिन कार्य किया है अतः उसकी सेवाऐं समाप्त करने के पूर्व धारा 25 (एफ) औद्योगिक विवाद अधिनियम में दी गयी प्रकिया का अनुपालन करने की विधिक आवष्यकता नहीं थी।

45. प्रत्यर्थी ने स्वंय को साक्ष्य में प्रस्तुत कर सषपथ कहा कि वह दस साल तक 470/– रूपये प्रतिमाह के वेतन पर नियुक्त था। अपीलार्थी की तरफ से एक कर्मचारी ने साक्ष्य में उपस्थित होकर कहा कि कर्मचारी ने कभी भी एक वर्ष में 240 दिन काम नहीं किया। श्रम न्यायालय ने प्रत्यर्थी के साक्ष्य पर भरोसा किया और मस्टर रोल तथा 1976 से 86 तक की वेतन रजिस्टर न प्रस्तुत करने पर प्रतिकूल अवधारणा ग्रहण कर यह अवधारित किया कि प्रत्यर्थी ने 240 दिन से ज्यादे कार्य किया अतः उसकी सेवामुक्ति अवैधानिक थी। श्रम न्यायालय ने धारा 25 (एफ), 25 (जी) एवं 25 (एच) की प्रक्रिया का पालन न करने के कारण कर्मचारी को पुनर्स्थापना के लिए आदेषित किया एवं साथ ही पिछले वेतन की 20 प्रतिषत धनराषि अदा करने का निर्देष दिया।

46. माननीय उच्च न्यायालय की एकलपीठ ने श्रम न्यायालय के निर्णय की पुष्टि की तथा श्रम न्यायालय के निर्णय के विरूद्ध अपीलार्थी की याचिका खारिज की। एकल पीठ के निर्णय के विरूद्ध माननीय उच्च न्यायालय की खण्डपीठ ने लेटर्स पेटेंट अपील निरस्त की एवं यह अवधारित किया कि श्रम न्यायालय ने सही अवधारित किया है कि कर्मचारी ने मौखिक साक्ष्य से अपने कथन साबित किया है। माननीय खण्डपीठ ने श्रम न्यायालय द्वारा

वेतन पंजिका, मस्टर रोल, तथा कर्मचारियों की वरिष्ठता सूची न प्रस्तुत करने पर ग्रहण की गयी प्रतिकूल अवधारणा को भी सही ठहराया। श्रम न्यायालय ने यह भी अवधारित किया कि प्रत्यर्थी की तुलना में एवं कनिष्क कर्मचारी की सेवा नियमित रूप से जारी रखी गयी और प्रत्यर्थी की सेवा समाप्त कर दी गयी।

47. माननीय सर्वोच्च न्यायालय के समक्ष माननीय उच्च न्यायालय की खण्डपीठ के निर्णय के विरूद्ध अपीलार्थी की यह बहस थी कि माननीय सर्वोच्च न्यायालय ने अपने अनेक निर्णयों में अत्यन्त स्पष्ट रूप से यह अवधारित किया है कि प्रारम्भिक तौर पर सिद्ध करने का दायित्व कर्मचारी पर है कि सेवा समाप्ति की तिथि के पूर्व एक वर्ष में कर्मचारी ने 240 दिन कार्य किया है जो दायित्व निर्वाह करने में कर्मचारी असफल रहा है। यह बहस भी की गयी कि 10 साल का अभिलेख प्रस्तुत न करने पर प्रतिकूल अवधारणा ग्रहण करने की कोई वजह नहीं थी। प्रत्यर्थी की तरफ से यह बहस की गयी, श्रम न्यायालय ने प्रतिकूल अवधारणा अभिलेखों के सम्बन्ध में ग्रहण करके श्रम न्यायालय ने सही किया है क्योंकि नियोजक के कब्जे में अभिलेख थे अतः श्रम न्यायालय द्वारा मॉग किये जाने पर उसे प्रस्तुत करना नियोक्ता का कर्तव्य था। यह बहस भी की गयी कि अभिलेख नियोक्ता के कब्जे में है इसलिए उसका दायित्व है कि वह सिद्ध करे कि सम्बन्धित अवधि में कर्मचारी ने 240 दिन कार्य नहीं किया है।

48. उभयपक्ष की उक्त बहस के परिपेक्ष्य में माननीय सर्वोच्च न्यायालय ने धारा 2 (ओओ), धारा 25 (बी) एवं 25 (एफ) की स्पष्ट एवं बोधगम्य व्याख्या करते हुए प्रस्तर 8 पृष्ठ 43 में कर्मचारी द्वारा तथ्यों को सिद्ध करने के दायित्व के सम्बन्ध में तथा छटनी की वैधानिकता के सम्बन्ध में यह अवधारित किया है, "To attract provisions of Section 25-F, the workman claiming protection under it, has to prove that there exists relationship of employer and employee; that he is a workman within the meaning of Section 2(s) of the Act; the establishment in which he is employed is an industry within the meaning of the Act and he must have put in not less than one year of continuous service as defined by Section 25- B under the employer. These conditions are cumulative. If any of these conditions is missing the provisions of Section 25 –F will not be attracted. To get relief from the court the workman has to establish that he has right to continue in service and that his service has been terminated without complying with the provisions of Section 25-F of the Act.

The section postulates three conditions to be fulfilled by an employer for getting a valid retrenchment, namely:-

(i) one month's clear notice in writing indicating the reasons for retrenchment or that the workman has been paid wages for the period of notice in lieu of such notice;

(ii) payment of retrenchment compensation which shall be equivalent to 15 day's average pay for every completed year of continuous service or any part thereof, in excess of six months;

(iii) a notice to the appropriate Government in the prescribed manner."

49. माननीय सर्वोच्च न्यायालय ने प्रस्तर 10 में (1980) 4 एस. सी.सी पृष्ठ 443, सुरेन्द्र कुमार वर्मा बनाम सेन्ट्रल गर्वमेंन्ट इण्डस्ट्रीयल ट्रिब्यूनल कम लेबर कोर्ट में अपने पूर्णपीठ के फैसले सहित अनेक फैसलों का उल्लेख एवं उनकी व्याख्या करते हुए यह अवधारित किया है कि यह सिद्धान्त है कि सिद्ध करने का दायित्व कर्मचारी पर है कि वह दर्षाये कि कथित छटनी की तिथि के ठीक पूर्व एक वर्ष में उसने 240 दिन कार्य किया है और यह दायित्व भी उसी पर है वह स्वंय के साक्ष्य में परिक्षित कराने के अतिरिक्त साक्ष्य प्रस्ततुत करें।

50. निर्णय के प्रष्तर 18 में माननीय सर्वोच्च न्यायालय ने उल्लेख किया है कि प्रत्यर्थी की तरफ से मौखिक साक्ष्य के अतिरिक्त कोई साक्ष्य 240 दिन कार्य करने के सम्बन्ध में नहीं प्रस्तुत किया गया है, न वेतन या मजदूरी के सम्बन्ध में कोई रसीद, या अभिलेख या आदेष प्रस्तुत है, न कोई सहकर्मचारी परिक्षित कराया गया, न ही नियोक्ता द्वारा प्रस्तुत मस्टर–रोल पर कोई खण्ड़न प्रस्तुत किया गया।

51. माननीय सर्वोच्च न्यायालय ने यह भी उल्लेख किया है कि यह असम्भव है कि कर्मचारी जो इतनी लम्बी सेवा करने का दावा करता है उसके पास नियोक्ता के अधीन सेवा में लगे रहने तथा कार्य की प्रकृति के सम्बनध में कोई अभिलेखीय साक्ष्य नहीं होगा। माननीय सर्वोच्च न्यायालय ने अवधारित किया कि कर्मचारी ने 240 दिन तक कार्य में संलग्न रहने के तथ्य को सिद्ध करने के दायित्व का निर्वाह नहीं किया है एवं विद्वान अधीनस्थ न्यायालयों ने नियोक्ता द्वारा 10 वर्ष का अभिलेख न प्रस्तुत करने के सम्बन्ध में प्रतिकूल अवधारणा गलत ग्रहण की है। माननीय सर्वोच्च न्यायालय ने यह अवधारित किया कि प्रत्यर्थी की सेवा समाप्ति के पूर्व प्रत्यथी को धारा 25 (एफ) की सुरक्षा अथवा अनुपालन का अधिकार नहीं था।

52. धारा 25 (जी) एवं 25 (एच) के अनुपालन के सम्बन्ध में यह साक्ष्य था कि दैनिक वेतन भोगी की सूची का रख–रखाव अपीलार्थी द्वारा नहीं किया जाता। इस सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि कर्मचारी नियमित सेवा के अभाव में अपीलार्थी से दैनिक वेतन भोगियों की वरिष्ठता सूची के रख–रखाव की उम्मीद नहीं की जा सकती है। अभिलेखों की मॉग पर अपीलार्थी द्वारा न प्रस्तुत किये जाने पर धारा 114 (III) (जी) भारतीय साक्ष्य अधिनियम के अन्तर्गत न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण किये जाने के सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है ऐसी अवधारणा ग्रहण करने पूर्व न्यायालय के समक्ष कर्मचारी द्वारा इस बात का साक्ष्य प्रस्तुत करना होगा कि कोई वरिष्ठता सूची अस्तित्व में है अन्यथा प्रतिकूल अवधारणा ग्रहण करने की अनुतोष नहीं प्रदान की जा सकती। न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण करने हेतु अधिकार प्रदत्त होने के

लिए न्यायालय को सन्तुष्ट होना अनिवार्य है कि साक्ष्य अस्तित्व में है और उसे सिद्ध किया जा सकता था। माननीय सर्वोच्च न्यायालय ने तदनुसार अपील स्वीकार की।

53. वर्तमान मामले के तथ्य एवँ परिस्थिति को दृष्टिगत रख यह स्पष्ट है कि प्रार्थी कर्मकार को सेवा में बने रहने का विधिक अधिकार प्राप्त नहीं है क्योंकि उसकी नियुक्ति के लिए संस्थान द्वारा कभी कोई नियमित प्रक्रिया नियुक्ति हेतु नहीं अपनायी गयी। माननीय सर्वोच्च न्यायालय द्वारा प्रदत्त विधि व्यवस्था से यह निष्कर्ष भी स्पष्ट है कि प्रार्थी श्री कैलाष चन्द्र मीणा को धारा 25 (एफ) के अर्न्तगत कोई सुरक्षा उपलब्ध नहीं है और विपक्षी संस्थान को धारा 25 (एफ) के अनुपालन का कोई दायित्व नहीं है।

54. जहॉ तक धारा 2 (जी) में राजस्थान सरकार द्वारा (नियोजक) की परिभाषा में संषोधन के आधार पर प्रार्थी को विपक्षी के नियोजन में मानकर सेवा में वापस लिये जाने का प्रष्न है इस सम्बन्ध में उल्लेखनीय है कि भारतीय संविधान के अनुच्छेद 14 एवं 16 की मंषा के अनुरूप विपक्षी द्वारा नियुक्ति की नियमित प्रक्रिया अपनाकर किसी व्यक्ति को नियुक्त किये जाने की दषा में ही उसे नियमितिकरण के सन्दर्भ में विपक्षी को निर्देष दिये जाने के बिन्दु पर किसी न्यायालय द्वारा विचार किया जाना विधिक रूप से संभव है। प्रार्थी के सन्दर्भ में विपक्षी द्वारा कोई नियुक्ति प्रक्रिया अपनाकर सेवा में नहीं रखा गया है अतः इस सन्दर्भ में प्रार्थी के विद्वान अधिवक्ता की बहस सारहीन है कि प्रार्थी को विपक्षी के नियोजन में मान लिया जाय और उसे याचित अनुतोष प्रदान किया जाय। विपक्षी की तरफ से संविदा कर्मचारीयों के सन्दर्भ में स्टील ऑथोरिटी ऑफ इण्ड़िया लिमिटेड़ – अपीलार्थीगण बनाम नेषनल यूनियन वॉटर फ्रान्ट वर्कर्स एवं अन्य का दृष्टान्त प्रस्तुत किया गया है जिसमें विचारणार्थ अन्य प्रष्नों के अतिरिक्त मुख्य प्रष्न यह था कि कॉन्ट्रेक्ट लेबर (Regulation and abolition) एक्ट 1970 के अन्तर्गत ''समुचित सरकार'' (Appropriate Government) द्वारा ठेकेदारों के माध्यम से सेवा देने वाले संवीदाकर्मियों के संविदा पर कार्य करने के उन्मूलन की अधिसूचना जारी करने के बाद क्या संविदाकर्मियों को स्वतः प्रधान नियोक्ता के संस्थान की सेवा में नियमित कर्मचारी के रूप में कार्यरत मान लिया जाएगा? यह मामला संविदा के आधार पर सेवा लेने की रीति के उन्मूलन से संबंधित था ? जिसे वर्तमान मामले के तथ्य एवं परिस्थितियों से कोई सम्बन्ध नहीं है और नहीं उक्त दृष्टान्त में दी गई विधि व्यवस्था का वर्तमान मामले पर कोई असर पड़ना है क्योंकि वर्तमान मामले में उक्त अधिनियम की धारा 10 के अन्तर्गत है निर्गत किसी निषेधात्मक अधिसूचना के प्रष्न पर विचार नहीं होना है। अतः उक्त दृष्टान्त से वर्तमान मामले में कोई मदद नहीं ली जा सकती।

55. उक्त व्याख्या व विष्लेषण के आधार पर मैं इस निष्कर्ष पर हूं कि प्रार्थी के पक्ष में प्रार्थी को सेवा में वापस लिये जाने के लिये आदेष पारित किये जाने हेतु कोई विधिसंगत स्थिति नहीं बनती है।

56. जहां तक प्रार्थी की तुलना में उससे कनिष्ठ कर्मचारी को सेवा में बनाये रखने तथा प्रार्थी की सेवा समाप्त कर देने से संबंधित तथ्य के विचारण का प्रष्न है, इस सम्बन्ध में उल्लेखनीय है कि साक्ष्य में प्रस्तुत शपथ–पत्र के प्रस्तर 4 में याची ने उक्त आषय का उल्लेख किया है कि गणेष मीणा एवं अन्य जूनियर व्यक्ति अभी भी कार्य कर रहे है। इस सम्बन्ध में उल्लेखनीय है कि ऐसा कोई आधार याची द्वारा अपनी याचिका में प्रस्तुत नहीं किया गया है और इस बात को सीधे शपथ–पत्र द्वारा प्रस्तुत साक्ष्य में उठाया गया है। प्रतिपरीक्षा में पृष्ठ 3 पर साक्षी ने कहा है कि गणेष मीणा एवं अन्य कनिष्ठ व्यक्ति काम कर रहे है लेकिन मैने उनके नियुक्ति पत्र पेष नहीं किया है। उल्लेखनीय है कि इस बात का निराकरण किये बिना कि प्रार्थी और गणेष तथा अन्य व्यक्ति जिन्हें वह अपने से कनिष्ठ बताता है, उनकी नियुक्ति की क्या तिथि है यह नहीं कहा जा सकता कि प्रार्थी से कनिष्ठ व्यक्ति कार्यरत है। पत्रावली पर इस सम्बन्ध में प्रार्थी ने कोई साक्ष्य प्रस्तुत नहीं किये है जिससे इस बिन्दु का निराकरण हो सके। श्री सवाई सिंह विपक्षी साक्षी ने प्रतिपरीक्षा में स्वीकार किया है कि रसायन विभाग में ट्रान्सफर होकर आये चतुर्थ श्रेणी कर्मचारी के रूप में कर्मचारी कार्य कर रहे है और प्रार्थी के हटने के बाद ट्रान्सफर होकर आए कर्मचारी कार्य कर रहे है। साक्षी ने यह भी स्वीकार किया कि गणेष मीणा, भगीरथ और रणवीर कैलाष चन्द्र मीणा के साथ काम कर रहे थे। उक्त साक्ष्य से यह निष्कर्ष नहीं निकाला जा सकता कि उक्त व्यक्ति श्री कैलाष चन्द्र मीणा से कनिष्ठ हैं। यह भी उल्लेखनीय है कि स्वंय प्रार्थी के कथनानुसार रसायन विभाग में चतुर्थ श्रेणी कर्मचारी के दो पद रिक्त थे जिसमें एक पद पर प्रार्थी की सेवा संविदा के आधार पर ली जानी प्रारम्भ हुई थी और दूसरी हमेषा रिक्त रही। इस आधार पर भी प्रार्थी की तुलना में उससे कनिष्ठ व्यक्ति से सेवा में बने रहने का प्रष्न नहीं उठता।

57. पक्षकारों के अभिवचनों तथा उसके समर्थन में प्रदत्त प्रलेखीय एवं मौखिक साक्ष्य एवं पक्षकारों द्वारा प्रस्तुत विधिक दृष्टान्तों कि उक्त व्याख्या व विष्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि प्रार्थी श्री कैलाष चन्द्र मीणा विपक्षी की सेवा में नियमित रूप से नियुक्त कर्मचारी नहीं थे और उनकी सेवायें विपक्षी द्वारा संविदा के आधार पर अलग–अलग अवधि के लिये मैसर्स त्रिलोक सोल्जर्स एवं मैनपॉवर के माध्यम से प्राप्त की गयी है, जो 3–3 माह की अवधि के लिये अलग–अलग आदेषों के आधार पर ली जाती रही है और इस मामले में मालवीय राष्ट्रीय प्रोद्योगिक संस्थान, जयपुर द्वारा संविदा के आधार पर प्रार्थी की सेवा में आगे विस्तार न किया जाना अर्थात् दिनांक 4.9.2003 से प्रार्थी की सेवाऐं समाप्त करना विधिक एवं न्यायानुमत है। प्रार्थी यह तथ्य सिद्ध करने में असफल है कि धारा 25 (एफ) औद्योगिक विवाद अधिनियम के प्राविधान के उल्लंघन में उसकी सेवा समाप्त की गयी, अतः दावेदार किसी अनुतोष को पाने का हकदार नहीं है। न्यायनिर्णयन हेतु प्रेषित निर्देष का उत्तर उक्त प्रकार दिया जाता है। पंचाट तद्नुसार पारित किया जाता है।

58. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाषनार्थ प्रेषित की जाय।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 25 जून, 2014

का.आ. 1896.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल, दूरदर्शन और अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, दिल्ली के पंचाट (संदर्भ संख्या 65/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–42012/39/2000–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th June, 2014

S.O. 1896.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 65/2011) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director General, Doordarshan & Others and their workman, which was received by the Central Government on 23/06/2014.

P. K.VENUGOPAL, Section Officer

[No. L-42012/39/2000-IR(DU)]

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D.No.65/2011

Shri Surender Parsad
S/o Sh.Bishwanath Parsad,
C/o General Secretary,
H.No.C401, Harijan Basti,
Palam, New Delhi-110025.

...Workman

Versus

1. The Directorate General,
Doordarshan, Mandi House,
New Delhi.

2. The Executive Engineer(E),
Civil Construction Wings,
A.I.R. Soochna Bhawan,
C.G.O. Complex, Lodi Road,
New Delhi-110003.

...Management

AWARD

Civil Construction Wing, a unit of Doordarshan, Mandi House, New Delhi, (hereinafter referred to as the management) assigned job of operation of air conditioning plant, installed at Doordarshan Bhawan, Mandi House, New Delhi to a contractor. In 1994, M/s Cool Care Corporation was maintaining the AC plant. For the year 1995 to 1998, contract was awarded to M/s Kuldeep Refrigerations. In 1999, contract was awarded to M/s Ventek Engineering. Shri Surinder Parsad was engaged as a helper to work at the said AC plant by the contractor. Services of Shri Surinder Parsad were dispensed with by the contractor. Feeling aggrieved by that act and belabouring under a belief that the principal employer was under an obligation to engage his services, Shri Surinder Parsad served a notice of demand on the management seeking his reinstatement in its services. The demand was not conceded to by the management. Ultimately, he raised a dispute before the Conciliation Officer. His claim was contested by the management and as such, conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/39/2000-IR (DU), New Delhi dated 30.05.2000 with following terms:

> "Whether job of AC Electrician/helper in the establishment of Doordarshan is of a perennial nature and if Shri Surinder Parsad engaged through different contractors from 1998 to 1999 is entitled for regularization in services of Doordarshan? If so, to what relief the workman is entitled?"

2. Corrigendum was sent by the appropriate Government vide order No.L-42012/37/2000-IR(DU), New Delhi 06.11.2011 wherein it was pointed out that the words '1998-1999' appearing in the fourth line of the schedule may be read as '1994-1999'.

3. Claim statement was filed by Shri Surinder Parsad pleading therein that he was employed with the management, through a contractor, at its AC plant in Civil Construction Wing located at Doordarshan Bhawan, Mandi House, New Delhi. He was doing his duties under direct guidance and supervision of the management since 1994. Initially M/s Cool Care Corporation was the contractor. For the period 1995-98, M/s Kuldeep Refrigeration was awarded contract for operation work of AC plant. In 1999, M/s Ventek Engineering became the contractor. Though the contractors changed, yet he continued to work with the management till date of illegal termination of his services. He rendered continuous service of 240 days in calendar years from 1994 to 1999. He was direct employee of the management.

4. Claimant projects that legislature enacted Contract Labour(Regulation and Abolition) Act, 1970 (in short the Contract Labour Act) to abolish contract labour system and regular working conditions of the contract labours. Law laid by the Apex Court in Suresh ([999 (3) SCC 277] declares that an employee working under direct control of the principal employer is deemed to be an employee of the principal employer. In view of the law so laid, the management was liable to regulate his service conditions. He was entitled to regularization in service of the management with all facilities. Instead of regularizing his services, his services were dispensed with on 01.06.1999 in an illegal manner. He served notice of demand on the management seeking reinstatement in its service, but to no avail. He is unemployed since the date of termination of his service. He seeks reinstatement in service of the management with full back wages and all consequential benefits.

5. Claim was demurred by the management pleading that the claimant was never engaged, hence there exists no relationship of employer and employee between the parties. Work of operation of AC plant was assigned to a contractor. Claimant was engaged by the contractor to carry out his contractual obligations. Claimant had no locus standi to raise claim against the management. The management used to issue instructions to the contractor, who in turn complied those instructions relating to maintenance of AC plant through his employees. As and when new contractor was assigned the job, he was free to engage employees of the old contractor. The management pleads that it had no knowledge as to whether claimant was engaged by different contractor since 1994.

6. There was no occasion for it to supervise work of the claimant, asserts the management. The contractor was solely responsible to carry out smooth operation of the AC plant. Judgement relied by the claimant is not applicable to his case. Service of the claimant was not terminated by the management. There was no occasion for him to serve notice of demand, seeking reinstatement in service with continuity and full back wages on the management. His notice of demand was misconceived. There was no necessity on the part of the management to reply the notice of demand. Claim raised is false and frivolous, hence liable to be dismissed. It has been pleaded that an award may be passed in favour of the management and against the claimant.

7. Out of pleadings of the parties, following issues were settled by my learned predecessor:

(i) Whether the workman has no locus standi to prefer present claim against the management as stated? If so, its effects?

(ii) Whether there exists any relationship of employer and employee between the parties? If so, its effects.

(iii) As in terms of reference.

8. Vide order No.Z-22019/6/2007-IR (C-II), New Delhi dated 11.02.2008, case was transferred to Central Government Industrial Tribunal No.2, New Delhi for adjudication by the appropriate Government. It was retransferred to this Tribunal for adjudication vide order No.Z-22019/6/2007-IR (C-II), New Delhi dated 30.03.2011 by the appropriate Government.

9. Claimant examined himself in support of his claim. Shri Shyam Singh Yadav, Executive Engineer (Electrical), entered the witness box to testify facts on behalf of the management. No other witness was examined by either of the parties.

10. Arguments were heard at the bar. Ms.Anubha Kaushal, authorized representative, advanced arguments on behalf of the claimant. Shri A.P. Gupta, authorized representative, raised submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

Issue No.II

11. Claimant tendered his affidavit Ex.WW1/A as evidence, wherein he asserts that he was working with the management as helper at its AC plant since 1994. Duties were assigned to him by the Executive Engineer of the management. He presents that a management was his principal employer and his services were engaged through the contractor. He was a regular employee and in that capacity he rendered continuous service of 240 days in every calendar year, under guidance and control of the management. His services were illegally terminated.

12. Shri Shyam Singh Yadav unfolds in his affidavit Ex.MW1/A that the claimant was never engaged by the management. He was employed by the contractor to carry out his contractual obligations. Contractor was responsible for smooth operation of the AC plant and to discharge those obligations, the claimant was engaged by him. Claimant was working under direct control and supervision of the contractor. As noted above, rival facts are presented by the claimant and Shri Yadav in their respective affidavits. Resultantly, it becomes expedient to appreciate facts testified by the parties in the light of the documents proved over the record.

13. Claimant had proved visitor's passes as Ex.WW1/1 to Ex.WW1/22. When scanned, these documents bring it light that the claimant obtained entry passes to pay a visit to the Assistant Engineer/Junior Engineer (Electrical). Purpose of his visit was official as detailed in the documents, referred above. During course of arguments, Shri Gupta argued that entry passes were got issued by the claimant to seek entry in the premises of the

management. Entry passes were issued by the Security Officer to facilitate entry of the claimant inside the AC plant, installed at Doordarshan Bhawan, Mandi House, New Delhi. Ms. Kaushal could not project that those visitor's passes highlight that the claimant was an employee of the management. Those visitor passes could not indicate that there was relationship of employer and employee between the parties.

14. Attendance rolls Ex.WW1/23 to Ex.WW1/73 are placed over the record by the claimant. When scanned, these attendance rolls nowhere highlight that the claimant was working as employee of the management. Log sheet of AC plant, which are Ex.WW1/74 to Ex.WW1/79 are also proved by the claimant, besides character certificate Ex.WW1/80. Application of extension of entry passes and note sheet are also proved as Ex.WW1/81 to Ex.WW1/82. However, these documents nowhere give an inference that the claimant was an employee of the management.

15. No letter of appointment, order assigning duties to the claimant, sanctioning of leaves and release of pay in his favour by the management has been brought over the record. No communication of any sort, showing nexus of the claimant with the management as its employee, has been placed over the record. Claimant made a candid admission to the effect that he cannot produce any documentary evidence to show that wages were paid to him by the management at any point of time. Bald statement of the claimant to the effect that he was working under direct control and supervision of the management nowhere gets support from any documents brought over records by him. There is complete vacuum of facts to record findings to the effect that the claimant was an employee of the management. On the other hand, claimant had projected a case to the effect that he was an employee of the contractor and the management was his principal employer. Therefore, all these facts constrain me to conclude that the claimant was an employee of the contractor, who unsuccessfully claimed himself to be an employee of the management.

Issue No. I

16. Whether the claimant, who was an employee of the contractor, can maintain a dispute against the management? For an answer to this proposition, the Tribunal has to take note of the law contained in section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:-

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as –

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation – If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

17. As emerge out of the provisions of sub-section (1) of section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"….. they fall in three classes : (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial

adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

18. The Court ruled that neither section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub-section (1) of section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

19. As announced by the Apex Court, on issuance of a prohibitive notification , prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

20. In Shivnandan Sharma [1955 (1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was: was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

21. In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking

at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner, not the immediate contractor. The Apex Court stated law in following words:

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

22. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the management since he agitates that the contract agreement between the management and the contractor is sham and nominal.

23. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by section 10 of that Act. In regard to regulatory measures section 7 requires the principal employer to get itself registered, while section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made there-under penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of section 7 or by the contractor in complying the provisions of section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

24. In the Steel Authority of India (supra) the Apex Court laid emphasis "……the consequence of violation of Section 7 and 12 of the CLRA Act is explicitly provided in Section 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of

contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made thereunder, the contract labour could not be deemed to have become the employee of the principal employer.

25. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the management? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

> "29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

26. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

> "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

27. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the Court thus:

> "53. Our conclusions and answers to the questions raised are, therefore, as follows:
>
> (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
>
> (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is

raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

28. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujrat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

29. On turning to facts, the Tribunal noted that the claimant detailed facts to the effect that he was working under direct control and supervision of the management. However ocular facts testified by him remained empty sounded since it could not get any re-affirmation from any other piece of evidence, documentary or otherwise. In other to assess veracity of his claim the management was called upon to place contract agreements before the Tribunal. Pursuant to directions given, contract agreement entered into between the management and M/s. Cool Care Corporation and M/s. Ice Berg Corporation, the contractors, are placed over the record. These documents were not questioned by and on behalf of the claimant at all. No efforts were made to assail contents of these contract agreements. When these documents are perused, it came to light that contract was awarded by the management to the contractor for operation of 4 x 40 Tonne Refrigeration capacity central air conditioning plant comprising of 15 Nos. air handling units, 4 Nos. accel compressor units, 10 Nos. chiller/condenser, pumps, consol operation panel, complete with LT cubical type main control panel, AHU panel and allied equipment/accessories connected to AC plant, i.e. including heating system during winter etc. as required. Contract agreements nowhere give an inference that perfect paper arrangement was made with a view to evade provisions of beneficial labour legislations. As detailed in the contract agreements, contractor was supposed to maintain the AC plant and for that purpose he was required to engage his employees. Engagement of the claimant for maintaining of the said AC plant by the contractor nowhere highlight that the contractor was an agent of the management when services of the claimant were engaged. Contract agreements, referred above, no where bring it over the record that control and supervision was exercised by the management on the work of the claimant. There is vacuum of evidence to the effect that the management used to exercise administrative, financial, managerial and disciplinary control over the claimant. Under these circumstances, it has not come over the record to conclude that the contract agreement(s) were sham and nominal.

30. Claimant could not project that the management adopted a sham device to frustrate provisions of beneficial

labour legislations. He could not persuade this Tribunal to conclude that there were circumstances to announce him to be a deemed employee of the management. In absence of relationship of employer and employee between the parties and contract agreement being found to be genuine, the claimant could not show a right to raise dispute against the management. In view of these reasons, the issue is answered in favour of the management and against the claimant.

Issue No.III

31. No document was brought over the record to the effect that there was an occasion with the management to terminate his services. When claimant was an employee of the contractor, the management was not in a position to dispense with his services. Under these circumstances it cannot be said that the management acted in any manner and terminated his services. No question to assess legality and justifiability of action of the management, in terminating service of the claimant, would arise at all. Under these circumstances the claimant could not establish any claim against the management. In view of reasons detailed above, claim put forward by the claimant fails. He has no case for reinstatement in service of the management. His claim is discarded, being untenable. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Govt. for publication.

Dr. R.K. YADAV, Presiding Officer

Dated : 02.06.2014

नई दिल्ली, 25 जून, 2014

का.आ. 1897.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एग्जीक्यूटिव डायरेक्टर इंडिया ट्रेड प्रमोशन आर्गेनाईजेशन & अदर्स के प्रबंधातंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, मुंबई के पंचाट (संदर्भ संख्या CGIT-2/47 of 2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/06/2014 को प्राप्त हुआ था।

[सं. एल–42012/14/2012–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th June, 2014

S.O. 1897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT-2/47 of 2012) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Executive Director, India Trade Promotion Organisation & Others and their workmen, which was received by the Central Government on 23/06/2014.

[No. L-42012/14/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/47 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

INDIA TRADE PROMOTION ORGANISATION & ANR.

(1) The Executive Director
India Trade Promotion Organisation
Pragati Bhawan
Pragati Maidan
New Delhi 110 001.

(2) The Regional Manager
India Trade Promotion Organisation
(Govt. of India Enterprises)
Jhasi Castle, 3rd floor
7, Cooperage Road
Mumbai 400 001.

AND

THEIR WORKMEN.

Mrs. R.S. Khan & 9 Ors.
VRS Employees of ITPO
3rd floor, Jhansi Castle
7, Cooperage Road
Mumbai 400 001.

APPEARANCES:

FOR THE EMPLOYER : Mr. Y.K. Sharma, Representative.

FOR THE WORKMAN : Mr. M.V. Palkar, Advocate.

Mumbai, dated the 9th May, 2014.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/14/2012-IR (DU), dated 12.10.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of India Trade Promotion Organisation, Mumbai (A Govt of India Enterprise) by relieving Smt. R.S. Khan and 9 ors. ex-employees (as per exhibit-I) w.e.f. 08/04/2011 without giving them 3 months' notice pay is legal, just and proper? If not, what relief the concerned workmen are entitled to?"

List of workmen as per Ex-I

1. Mrs. R.S. Khan
2. Mrs. M. N. Prabhu
3. Mrs. A.S. Deshpande
4. Mrs. S. Faridi
5. Mrs. C.A. Redkar
6. Mrs. S. Damodaran
7. Mrs. R.R.Gawde
8. Mrs.M.B. Makwana
9. Ms. M. Potdar
10. Mrs. V.B. Agane.

2. After receipt of the reference, notices were issued to both the parties. In response to the notice the second party workmen filed their Statement of Claim at Ex-8. According to them they are ex-employees of the first party. The first party by their circular dt. 07/10/2010 declared voluntary retirement scheme for its employees. By issuing circulars time to time they extended the scheme till 16/03/2011. The second party workmen have submitted their applications in prescribed proforma for voluntary retirement on different dates. Their applications were accepted by the first party and their dues were also released in instalments. However the first party did not pay them pay of three months in lieu of notice. They have put condition to give undertaking which was unnecessary. As first party did not pay the three months' notice pay, therefore second party workmen raised industrial dispute before ALC (C), Mumbai. As conciliation failed the ALC sent his report to that effect to the Govt. of India, M/O. Labour. The Ministry of Labour thus sent the reference to this Tribunal. The workmen therefore pray for declaration that second party workmen are entitled to get three months' notice pay as shown in the schedule without any undertaking from them. They also pray that the first party be directed to release the payment of three months' notice pay to the respective workmen individually without condition of giving undertaking. They also pray for interest thereon @ 18 % p.a. from the due date till the date of payment and also pray for cost of the proceeding.

3. The first party resisted the statement of claim vide its written statement at Ex-10. According to them they have paid the dues in time and as per the rules. There was no delay and dues were not paid by instalments as has been alleged. In respect of the notice pay, according to them, they had offered to the workmen to accept the notice pay by giving undertaking. The workmen refused to give undertaking and therefore, the first party could not pay them the three months' notice pay. The undertaking was necessary. They are ready to pay the three months' notice pay to these workmen on giving undertaking. They have also shown readiness to pay 10% interest from the due date i.e. from 04/06/2012. According to them the workmen are not entitled to claim any cost.

4. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the action of management by not giving three months' notice pay to Smt. R.S.Khan & 9 Ors. ex-employees is just, legal and proper?	No.
2.	If not, what relief the workmen are entitled to?	As per final Order.
3.	What order?	As per order below.

REASONS

Issue No.1:-

5. In the case at hand the fact is not disputed that, as the second party workmen had opted for voluntary retirement as per the scheme, they were well entitled to receive three months' notice pay as per the rule. The fact is also not disputed that even the first party had offered three months' notice pay to these workmen subject to giving undertaking. According to the workmen the undertaking was not necessary. They refused to give undertaking. Therefore the first party also refused to release the said payment of notice pay of three months. On that count the second party had raised industrial dispute before ALC (C). As the dispute could not be settled the Ministry has sent the reference to this Tribunal. Both the parties have filed their affidavits. Now the first party is also ready to release the payment without putting the condition of giving undertaking by the workmen. The Regional Manager, Shri Y.K. Sharma in his affidavit Ex-13 has contended that they are not insisting to take undertaking from the workmen. In the circumstances now there is no obstacle in releasing the payment. I therefore hold that the workmen are entitled to receive three months'

notice pay from the first party. The condition of undertaking was no doubt unnecessary. In the circumstances now it needs no further discussion to decide this issue no.1 in the affirmative that the workmen are entitled to receive the three months' notice pay without giving undertaking as sought for by the first party.

Issue no.2 :-

6. In the light of discussions and finding on the issue no.1 above I hold that the workmen are entitled to get three months' notice pay without giving any undertaking. As there is delay, I also think it proper to direct the first party to pay interest on the amount to each workman @ 12% p.a. from the due date till the date of actual payment. Accordingly I allow the reference and proceed to pass the following order :

ORDER

(i) Reference is allowed with no order as to cost.

(ii) The first party is directed to pay the three months' notice pay to each of the workman at an earliest with interest thereon @ 12% p.a. from the due date till the date of actual payment.

Date: 09/05/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 25 जून, 2014

का.आ. 1898.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ जनरल मैनेजर टेलीकॉम फैक्ट्री, डोनर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, मुंबई के पंचाट (संदर्भ संख्या CGIT–2/37 of 2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/06/2014 को प्राप्त हुआ था।

[सं. एल–40011/10/2004–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th June, 2014

S.O. 1898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes theAaward (I.D No. CGIT-2/37 of 2005) of the Central Government Industrial Tribunal/ Labour Court No.2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief General manager, Telecom Factory Deonar and their workmen, which was received by the Central Government on 23/06/2014.

[No. L-40011/10/2014-IR(DU)]

P. K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT :

K.B. KATAKE, Presiding Officer

REFERENCE NO.CGIT-2/37 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF TELECOM FACTORY

The Chief General Manager
Telecom Factory
Deonar
Mumbai-400 088.

AND

THEIR WORKMEN

The Circle President
National Union of BSNL Workers
526-C-37, Lokmanya Co-op. Housing Society
Sector-5, Charkop
Kandivli (W)
Mumbai 400 076.

APPEARANCES :

FOR THE EMPLOYER : Mr. S. B. Kadam, Advocate.

FOR THE WORKMAN : Mr. J.H. Sawant, Advocate.

Mumbai, dated the 20th May, 2014.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-40011 / 10 /2004-IR (DU), dated 21.12.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"(1) Whether the action of the management in sanctioning/regularising the period of absence of Shri V.M. Hatipkar, Fitter (Inst) Gr.II from 2/6/1995 to 26/07/1998 as Extra Ordinary Leave without medical certificate vide memorandum dated 13/04/1999 is justified and proper? If not, (2) Whether the demand of the union for treating the period from 27/07/1998 to 08/12/1998 (on full wages and allowances etc.) on duty i.r.o. Shri V.M. Hatipkar, Fitter (Inst) Gr.II is proper and justified? If so, to what relief the concerned workman Shri V. M. Hatipkar is entitled and what other directions are necessary ?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice second party union has filed its statement of claim at Ex-6. According to

the union the workman is employee of first party since 15/05/1982. In the year 1995 he was Fitter (Instrument) Grade-II. Due to serious illness of epilepsy he could not attend his duties from 02/06/1995 to 26/07/1998. The management was well aware about the illness of the workman. On 27/07/1998 the workman reported his duty with medical certificate issued by the doctor stating that workman was suffering from epilepsy for last three years and he was under his treatment for the said period. However management directed the workman to report the Superintendent of J.J. Group of Hospitals, Mumbai for medical examination by standing medical board. The process of medical examination was rather time consuming and the workman was requesting the management to allow him to resume his duties. However they did not allow him to resume the duty. The Medial Board examined him and issued certificate dated 15/09/1998 advising light duty for the workman. The said certificate was forwarded to the management. Instead of allowing him to resume the duties, management had advised the workman to apply for voluntary retirement. The workman refused the suggestion. Finally management allowed the workman to resume his duty since 09/12/1998. However the management refused to treat the period from 2/6/1995 to 26/7/1998 as leave with medical certificate with all consequential benefits. They also refused to treat the period from 27/07/98 to 8/12/98 as a period on duty for all the purposes including full wages and consequential benefits. Therefore the union has raised the industrial dispute.

3. As conciliation failed, as per the report of ALC (C), the Central Labour Ministry has sent the reference to this Tribunal. The union therefore pray for declaration that action of the management not regularising the period of absence of Shri M.V. Hatipkar from 2/6/1995 to 26/07/1998 as leave with medical certificate with all consequential benefits including continuity of services and in not treating the period 27/7/98 to 08/12/1998 as a period on duty for all purposes including full wages and consequential benefits is illegal, unjustified and prays that management be directed to treat the absence of Shri V.M.Hatipkar for the aforesaid period as leave with medical certificate with all consequential benefits including continuity of service and also prays for direction to treat the period on duty from 27/07/1998 to 08/12/1998 as a period on duty for all the purposes including full wages and consequential benefits and also pray for cost of the reference.

4. The first party resisted the statement of claim vide its written statement at Ex-10. According to the first party the workman remained absent from duty from 2/6/1995. He neither obtained prior permission nor obtained any leave from the authority. He had also not sent any communication for his absence within a reasonable time limit. As per service rules remaining absent without prior permission or intimation for a period more than ten days amount to misconduct and employer can institute disciplinary action against such workman for violating rule 31 (g) of Certified Standing Orders applicable to the employees of Telecom Factory. After three years all of a sudden the workman came to the office on 27/7/1998 and submitted an application with medical certificate of sickness and fitness seeking permission to join the duty. He was referred to Govt. Hospital for the medical opinion with a view to ascertain his medical fitness before permitting to join his duties. The standing medical board examined the workman and forwarded the medical report on 15/09/1998. The first party received it on 21/9/1998. According to the medical report he was fit to resume light duty from 15/9/98 for two years and cannot be considered fit for type of work prescribed by the employer. The medical board neither recommended previous leave on medical grounds nor passed any remark on validity or otherwise of the medical certificate dt. 26/7/98 issued by psychiatrist in respect of the period 2/6/95 to 27/7/98.

5. The nature of work of the workman was semi-skilled connected with working on machine. Light work was possible only by reverting him to the cadre of mazdoor. He was accommodated in semi-skilled trade in other shop by way of transfer. It took time for obtaining administrative approval of transfer. In the mean time they advised the workman to seek retirement on medical grounds which would have been beneficial to the workman. However he did not accept the suggestion. Therefore after observing the procedure laid down the workman was permitted to join duty w.e.f. 8/12/1998. The entire period of unauthorised absence from 02/06/1995 to 26/07/1998 was regularised as extra ordinary leave without medical certificate i.e. leave without pay without medical certificate. As there was no medical certificate produced by the workman neither he had obtained prior sanction from the department. In the circumstances they pray that the workman is not entitled to the reliefs claimed for. Therefore they pray that the reference be dismissed with cost.

6. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether the action of management in regularising the period of absence of workman from 2/6/95 to 26/7/98 as extra ordinary leave without medical certificate is just and proper?	Yes.
2.	If not, whether the workman is entitled to the relief in respect of the period of absence as leave with medical certificate with all consequential benefits?	No.

3.	Whether the action of management in not treating the period from 27/07/98 to 8/12/1998 as period on duty for all purposes including full wages and consequential benefits is illegal and justified?	Partly in the affirmative.
4.	What relief the workman is entitled to?	As per order below.
5.	What order?	As per final order.

REASONS

Issues Nos. 1 & 2 :

7. In the case at hand fact is not disputed that workman remained absent from 02/06/1995 to 26/07/1998. The fact is not disputed that neither the workman had applied for leave nor had given any prior intimation of his absence to the management. The fact is not disputed that on 27/07/1998 he appeared in the office and submitted his application to allow him to resume his duties. The fact is also not disputed that along with his application the workman has produced a certificate of a psychiatrist who has certified that the workman was suffering from epilepsy for last three years and he was undergoing treatment for the same. He has also issued the fitness certificate.

8. In this respect it is pertinent to note that though the workman was absent continuously for more than 3 years, the management did not take any action against him. Such unauthorised absence amount to serious misconduct and the management could have very well initiated inquiry against the workman. However the management neither issued any charge sheet nor initiated any inquiry against the workman for his unauthorised absence. On the other hand they have regularised the period of his absence as extraordinary leave without medical certificate and without wages. The certificate produced by the workman is not sufficient to justify his absence for the vast period of 3 years. No other paper, document or prescription is produced by the workman. Therefore management sent the workman to J.J. Hospital for examination by medical board. The medical board has not expressed any opinion in respect of his previous illness and absence. They have recommended that workman was fit to perform light duty.

9. In the circumstances the action of the management in that respect cannot be said unjust or improper. On the other hand with all fairness they have regularised the period of absence as extra ordinary leave without pay. In the circumstances I hold that the workman is not entitled to the relief claimed in respect of the said period of unauthorised absence for three years. Accordingly I decide this issue no.1 in the affirmative. Consequently I decide this issue no.2 in the negative.

Issue No.3:-

10. According to the workman he reported the office of the company on 27/07/1998 and produced the certificate and requested the management to allow him to resume the duty. However the management refused to allow him to resume duty. On the other hand they sent him to J.J. Hospital for medical examination by the medical board. They took about four and half months' time to allow him to resume on duty. Therefore the workman is claiming that the said period be treated as on duty period for all purposes including full wages and consequential benefits. In this respect I would like to point out that, the medical board from J.J. Hospital had certified that the workman was fit to join his duties w.e.f. 15/09/1998. The certificate of psychiatrist produced by the workman in respect of his fitness cannot be considered as the said certificate is vague and unacceptable.

11. In the circumstances the management ought to have allowed the workman to join his duties w.e.f. 15/09/1998. Therefore I hold that the period from 15/09/1998 to 08/12/1998 has to be treated as the workman was on duty for all purposes including full wages and consequential benefits. Accordingly I decide this issue no.3 in the negative. Consequently I answer the issue no.4 partly in the affirmative. As a result the reference is partly allowed. Thus I proceed to pass the following order:

ORDER

(i) The reference is partly allowed with no order as to cost.

(ii) The action of the management in respect of the period of absence from 02/06/1995 to 26/07/1998 regularising it as extra ordinary leave without medical certificate and without wages is declared as just and proper.

(iii) The period from 15/09/1998 to 08/12/1998 be treated as period on duty for all purposes including full wages and consequential benefits. The first party is directed to pay the wages and give all consequential benefits to the workman of the aforesaid period.

Date: 20/05/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, दिनांक 25 जून, 2014

का.आ. 1899.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल, दूरदर्शन और अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, दिल्ली

के पंचाट (संदर्भ संख्या 82/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–42012/37/2000–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th June, 2014

S.O. 1899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 82/2011) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director General, Doordarshan & Others and their workman, which was received by the Central Government on 23/06/2014.

[No. L-42012/37/2000-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 82/2011

Shri Satish Kumar
S/o Late Sh.Shish Ram,
R/o 18/392, R.K.Colony,
Badli Road, Near Civil Hospital,
Bahadurgarh, Distt. Jhajjar,
Haryana.

...Workman

Versus

1. The Directorate General,
Doordarshan, Mandi House,
New Delhi.

2. The Executive Engineer(E),
Civil Construction Wings,
A.I.R. Soochna Bhawan,
C.G.O. Complex, Lodi Road,
New Delhi-110003.

...Management

AWARD

Civil Construction Wing, a unit of Doordarshan, Mandi House, New Delhi, (hereinafter referred to as the management) assigned job of operation of air conditioning plant, installed at Doordarshan Bhawan, Mandi House, New Delhi to a contractor. In 1994, M/s. Cool Care Corporation was maintaining the AC plant. For the year 1995 to 1998, contract was awarded to M/s. Kuldeep Refrigerations. In 1999, contract was awarded to M/s. Ventek Engineering. Shri Satish Kumar was engaged as a helper to work at the said AC plant by the contractor. Services of Shri Satish Kumar were dispensed with by the contractor. Feeling aggrieved by that act and belabouring under a belief that the principal employer was under an obligation to engage his services, Shri Satish Kumar served a notice of demand on the management seeking his reinstatement in its services. The demand was not conceded to by the management. Ultimately, he raised a dispute before the Conciliation Officer. His claim was contested by the management and as such, conciliation proceedings failed. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42012/37/2000-IR (DU), New Delhi dated 30.05.2000, with following terms:

> "Whether job of AC Electrician/helper in the establishment of Doordarshan is of a perennial nature and if Shri Satish Kumar engaged through different contractors from 1998 to 1999 is entitled for regularization in services of Doordarshan? If so, to what relief the workman is entitled?"

2. Corrigendum was sent by the appropriate Government vide order No.L-42012/37/2000-IR(DU), New Delhi 06.11.2011 wherein it was pointed out that the words '1998-1999' appearing in the fourth line of the schedule may be read as '1994-1999'.

3. Claim statement was filed by Shri Satish Kumar pleading therein that he was employed with the management, through a contractor, at its AC plant in Civil Construction Wing located at Doordarshan Bhawan, Mandi House, New Delhi. He was doing his duties under direct guidance and supervision of the management since 1994. Initially M/s. Cool Care Corporation was the contractor. For the period 1995-98, M/s. Kuldeep Refrigeration was awarded contract for operation work of AC plant. In 1999, M/s. Ventek Engineering became the contractor. Though the contractors changed, yet he continued to work with the management till date of illegal termination of his services. He rendered continuous service of 240 days in calendar years from 1994 to 1999. He was direct employee of the management.

4. Claimant projects that legislature enacted Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act) to abolish contract labour system and regular working conditions of the contract labours. Law laid by the Apex Court in Suresh [1999 (3) SCC 277] declares that an employee working under direct control of the principal employer is deemed to be an employee of the principal employer. In view of the law so laid, the

management was liable to regulate his service conditions. He was entitled to regularization in service of the management with all facilities. Instead of regularizing his services, his services were dispensed with on 01.06.1999 in an illegal manner. He served notice of demand on the management seeking reinstatement in its service, but to no avail. He is unemployed since the date of termination of his service. He seeks reinstatement in service of the management with full back wages and all consequential benefits.

5. Claim was demurred by the management pleading that the claimant was never engaged, hence there exists no relationship of employer and employee between the parties. Work of operation of AC plant was assigned to a contractor. Claimant was engaged by the contractor to carry out his contractual obligations. Claimant had no locus standi to raise claim against the management. The management used to issue instructions to the contractor, who in turn complied those instructions relating to maintenance of AC plant through his employees. As and when new contractor was assigned the job, he was free to engage employees of the old contractor. The management pleads that it had no knowledge as to whether claimant was engaged by different contractor since 1994.

6. There was no occasion for it to supervise work of the claimant, asserts the management. The contractor was solely responsible to carry out smooth operation of the AC plant. Judgement relied by the claimant is not applicable to his case. Service of the claimant was not terminated by the management. There was no occasion for him to serve notice of demand, seeking reinstatement in service with continuity and full back wages on the management. His notice of demand was misconceived. There was no necessity on the part of the management to reply the notice of demand. Claim raised is false and frivolous, hence liable to be dismissed. It has been pleaded that an award may be passed in favour of the management and against the claimant.

7. Out of pleadings of the parties, following issues were settled by my learned predecessor:

(i) Whether the workman has no locus standi to prefer present claim against the management as stated? If so, its effects?

(ii) Whether there exists any relationship of employer and employee between the parties? If so, its effects.

(iii) As in terms of reference.

8. Vide order No.Z-22019/6/2007-IR (C-II), New Delhi dated 11.02.2008, case was transferred to Central Government Industrial Tribunal No.2, New Delhi for adjudication by the appropriate Government. It was retransferred to this Tribunal for adjudication vide order No. Z-22019/6/2007-IR (C-II), New Delhi dated 30.03.2011 by the appropriate Government.

9. Claimant examined himself in support of his claim. Shri Shyam Singh Yadav, Executive Engineer (Electrical), entered the witness box to testify facts on behalf of the management. No other witness was examined by either of the parties.

10. Arguments were heard at the bar. Ms.Anubha Kaushal, authorized representative, advanced arguments on behalf of the claimant. Shri A.P. Gupta, authorized representative, raised submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

Issue No. II

11. Claimant tendered his affidavit Ex.WW1/A as evidence, wherein he asserts that he was working with the management as helper at its AC plant since 1994. Duties were assigned to him by the Executive Engineer of the management. He presents that a management was his principal employer and his services were engaged through the contractor. He was a regular employee and in that capacity he rendered continuous service of 240 days in every calendar year, under guidance and control of the management. His services were illegally terminated.

12. Shri Shyam Singh Yadav unfolds in his affidavit Ex.MW1/A that the claimant was never engaged by the management. He was employed by the contractor to carry out his contractual obligations. Contractor was responsible for smooth operation of the AC plant and to discharge those obligations, the claimant was engaged by him. Claimant was working under direct control and supervision of the contractor. As noted above, rival facts are presented by the claimant and Shri Yadav in their respective affidavits. Resultantly, it becomes expedient to appreciate facts testified by the parties in the light of the documents proved over the record.

13. Claimant had proved visitor's passes as Ex.WW1/1 to Ex.WW1/14. When scanned, these documents bring it light that the claimant obtained entry passes to pay a visit to the Assistant Engineer/Junior Engineer (Electrical). Purpose of his visit was official as detailed in the documents, referred above. During course of arguments, Shri Gupta argued that entry passes were got issued by the claimant to seek entry in the premises of the management. Entry passes were issued by the Security Officer to facilitate entry of the claimant inside the AC plant, installed at Doordarshan Bhawan, Mandi House, New Delhi. Ms. Kaushal could not project that those visitor's passes highlight that the claimant was an

employee of the management. Those visitor passes could not indicate that there was relationship of employer and employee between the parties.

14. Attendance rolls Ex.WW1/15 to Ex.WW1/73 are placed over the record by the claimant. When scanned, these attendance rolls nowhere highlight that the claimant was working as employee of the management. Log sheet of AC plant, which are Ex.WW1/74 to Ex.WW1/79 are also proved by the claimant. However, these documents nowhere give an inference that the claimant was an employee of the management. Ex.WW1/M1 makes it apparent that the claimant was an employee of the contractor.

15. No letter of appointment, order assigning duties to the claimant, sanctioning of leaves and release of pay in his favour by the management has been brought over the record. No communication of any sort, showing nexus of the claimant with the management as its employee, has been placed over the record. Claimant made a candid admission to the effect that he cannot produce any documentary evidence to show that wages were paid to him by the management at any point of time. Bald statement of the claimant to the effect that he was working under direct control and supervision of the management nowhere gets support from any documents brought over records by him. There is complete vacuum of facts to record findings to the effect that the claimant was an employee of the management. On the other hand, claimant had projected a case to the effect that he was an employee of the contractor and the management was his principal employer. Therefore, all these facts constrain me to conclude that the claimant was an employee of the contractor, who unsuccessfully claimed himself to be an employee of the management.

Issue No. I

16. Whether the claimant, who was an employee of the contractor, can maintain a dispute against the management? For an answer to this proposition, the Tribunal has to take note of the law contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short the Contract Labour Act), which makes provision for prohibition of employment of contract labour. For sake of convenience provisions of Section 10 of the Contract Labour Act are reproduced thus:

"10. Prohibition of employment of contract labour:-

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as :–

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment,

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation – If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

17. As emerge out of the provisions of sub-section (1) of Section 10 of the Contract Labour Act, the appropriate Government may, by notification in the official gazette, prohibit employment of contract labour in any process, operation or other work in any establishment. When employment of contract labour is prohibited, by issuance of a notification in official gazette by the appropriate Government, what would be the status of the contract labour employed in the establishment? Such a question arose before the Apex Court in Steel Authority of India Ltd. [2001 (7) S.C.C.I]. The Apex Court ruled therein that there cannot be automatic absorption of contract labour by principal employer on issuance of notification by the appropriate Government on abolition of contract labour system, under sub section (1) of Section 10 of the Contract Labour Act. It would be expedient to reproduce the law laid by the Apex Court, which is extracted thus:

"….. they fall in three classes : (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10 (1) of the CLRA

Act, no automatic absorption of contract labour working in the establishment was ordered, (2) where contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to the abolition of contract labour but present instances wherein the court pierce the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited, (3) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of the contractor, the courts have held that the contract labour would indeed be employees of the principal employer".

18. The Court ruled that neither Section 10 of the Contract Labour Act nor any other provision in that Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuance of a notification by the appropriate Government under sub section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order for absorption of the contract labour working in the establishment concerned. It was further ruled therein that in Saraspur Mills case [1974 (3) SCC 66], the workman engaged for working in the canteen run by the Cooperative Society for the appellant were the employees of the appellant mills. In Basti Sugar Mills (AIR 1964 S.C. 355) a canteen was run in the factory by the Cooperative Society and as such the workers working in the canteen were held to be employees of the establishment. The Apex Court ruled that these cases fall in class (3) mentioned above. Judgment in Hussainbhai (1978 Lab. I.C. 1264) was considered by the Apex Court in the said precedent and it was ruled therein that the said precedent falls in class (2), referred above. The Apex Court concluded that on issuance of prohibitive notification under Section 10 of the Contract Labour Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislation so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose.

19. As announced by the Apex Court, on issuance of a prohibitive notification, prohibiting employment of contract labour or otherwise in any industrial dispute brought before it by the contract labour in regard to conditions of his service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result in the establishment or for supply of the contract labour for the work of the establishment under a genuine contract or it is a mere ruse/camouflage to evade compliance of beneficial legislation so as to deprive the workers of the benefits therein. Thus it was ruled that a contract labour can raise a dispute before the industrial adjudicator in regard to his conditions of service and in case the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer. Also see Standard Vacuum Refining Co. of India Ltd. [1960 (II) LLJ. 233], which was referred with approval in Steel Authority of India.

20. In Shivnandan Sharma [1955 (1) LLJ 688], the respondent Bank entrusted its Cash Department under a contract to the Treasures who appointed cashiers, including the appellant Head Cashier. The question before the Apex Court was : was the appellant an employee of the Bank? On construction of the agreement entered into the Bank and the Treasure, the Court laid down:

> "If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servant of the master."

In the above precedent the Apex Court for the first time laid down the crucial test of supervision and control for determining the relationship of employer and employee.

21. In Hussainbhai (supra) the petitioner, who was manufacturing ropes, entrusted the work to a contractor who engaged his own workers. When, after some time, the workers were not engaged, they raised an industrial dispute that they were denied employment by the petitioner. On reference of that dispute, the labour court passed an award against the petitioner. When matter reached the Apex Court, on examination of various factors and applying the effective control test, it was held that though there was no direct relationship between the petitioner and the workers yet on lifting the veil and looking at the conspectus of factors governing employment, the naked truth, though draped in different perfect paper arrangement, was that the real employer was the petitioner,

not the immediate contractor. The Apex Court stated law in following words:

> "Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractor with whom alone the workers have immediate or direct relationship ex-contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor***. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real-life bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment."

As noted above, this precedent does not present an illustration of abolition of contract labour but an instance where the Court pierced the veil and declared the correct position to the effect that the contract labours were employees of the principal employer and not of the contractor.

22. In Steel Authority of India (supra) it has been ruled that the term "contract labour" is a species of workman. A workman may be hired : (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer, or (2) in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But when a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai's case (supra) and in Indian Petrochemicals Corporation case [1999 (6) S.C.C. 439] etc.; if the answer is in affirmative, the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

In view of the legal proposition, referred above, it is concluded that the claimant can maintain this dispute against the management since he agitates that the contract agreement between the management and the contractor is sham and nominal.

23. Whether any directions for deeming the contract labour as having become the employees of the principal employer can be issued, when the contractor or the principal employer had violated the provisions of the Contract Labour Act? To find an answer, provisions of that Act are to be examined. The Contract Labour Act regulates conditions of workers in contract labour system and provides for its abolition by the appropriate Government as provided by Section 10 of that Act. In regard to regulatory measures Section 7 requires the principal employer to get itself registered, while Section 12 obliges every contractor to obtain a licence, under the provisions of that Act. Section 9 places an embargo on the principal employer of an establishment from employing contactor labour in the establishment, when either it is not registered or its registration has been revoked. Section 12 of the Contract Labour Act imposes a liability on a contractor not to undertake or execute any work through contract labour except under and in accordance with a licence. Sections 23, 24 and 25 make contraventions of the provisions of that Act or Rules made there-under penal. In Dena Nath (1992 Lab. I.C. 75) the Apex Court considered the question, whether non-compliance of the provisions of sections 7 and 12 by the principal employer and the contractor respectively would make the contract labour employed by the principal employer as the employee of the latter. It was ruled that only consequence of non-compliance either by the principal employer of Section 7 or by the contractor in complying the provisions of Section 12 is that they are liable for prosecution under the said Act. But the employees employed through the contractor cannot be deemed to be the employees of the principal employer.

24. In the Steel Authority of India (supra) the Apex Court laid emphasis "……the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be if absorption of contract labour in the establishment of principal employer or a lesser or harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the

principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible". The above authoritative pronouncements make it clear that on violations of the provisions of the Contract Labour Act or Rules made there-under, the contract labour could not be deemed to have become the employee of the principal employer.

25. Whether this Tribunal has power to order for abolition of contract labour system in the establishment of the management? For an answer, legal dicta is to be considered. Before enactment of the Contract Labour Act, the industrial adjudicator, in appropriate cases, used to issue directions to the establishment concerned to abolish or modify system of contract labour. Reference can be made to precedents in United Salt Works and Industries Ltd. [1962 (I) LLJ. 131], Shibu Metal Works [1966 (I) LLJ. 717], National Iron & Steel Co. [1967 (II) LLJ. 23] and Ghatge and Patil (Transport) Pvt. Ltd. [1968 (I) LLJ. 566]. The National Commission on Labour (1966) in para 29.11 of its report, enumerated those factors, on which abolition of contract labour was ordered, thus:

> "29.11. Judicial awards have discouraged the practice of employment of contract labour, particularly when the work is (i) perennial and must go on from day to day; (ii) incidental and necessary for the work of the factory; (iii) sufficient to employ a considerable number of whole time workmen; and (iv) being done in most concerns through regular workmen. These awards also came out against the system of 'middlemen'."

26. After Contract Labour Act was brought on statute book, the Apex examined jurisdiction of the industrial adjudicator to issue directions to the establishment to abolish contract labour in Vegoils Private Ltd. [1971 (2) S.C.C. 724] and ruled that it would be proper that the question, whether the contract labour in the appellant industry was to be abolished or not, be left to be dealt with by the appropriate Government under the provisions of that Act, if it becomes necessary. The observations made by the Court are extracted thus:

> "The appropriate Government when taking action under Section 10 will have an overall picture of the industries carrying on similar activities and decide whether contact labour is to be abolished in respect of any of the activities of that industry. Therefore, it is reasonable to conclude that the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with Section 10. Therefore, it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not, is left to be dealt with by the appropriate Government under the Act, if it becomes necessary. On this ground, we are of the opinion that the direction of the Industrial Tribunal in this regard will have to be set aside.***. The legality of the direction given by the Industrial Tribunal abolishing contract labour in respect of loading and unloading from May 1, 1971, can also be considered from another point of view. The Central Act, as mentioned earlier, had come into force on February 10, 1971. Under Section 10 of the said Act the jurisdiction to decide matters connected with prohibition of contract labour is now vested in the appropriate Government. Therefore, with effect from February 10, 1971, it is only the appropriate Government that can prohibit contract labour by following the procedure and in accordance with the provisions of the Central Act. The Industrial Tribunal, in the circumstances, will have no jurisdiction, through its award dated November 20, 1970, to give a direction in that respect which becomes, enforceable after the date of the coming into force of the Central Act. In any event, such a direction contained in the award cannot be enforceable from a date when abolition of contract labour can only be done by the appropriate Government in accordance with the provisions of the Central Act".

27. In Gujarat Electricity Board [1995 (5) S.C.C. 27] the same view was taken by the Apex Court holdings that the authority to abolish the contract labour vests in the appropriate Government and not in any court including the industrial adjudicator. It would be apposite to reproduce the observation of the Court thus:

> "53. Our conclusions and answers to the questions raised are, therefore, as follows :—
>
> (i) In view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has jurisdiction to do so.
>
> (ii) If the contract is sham or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes

to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2 (k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act.

(iii) If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and their absorption. However, the dispute, will have to be raised invariably by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have first to direct the workmen to approach the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the reference pending. If pursuant to such reference, the contract labour is abolished by the appropriate Government, the industrial adjudicator will have to give opportunity to the parties to place the necessary material before him to decide whether the workmen of the erstwhile contractor should be directed to be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labour system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can decide as to who and how many of the workmen should be absorbed and on what terms".

28. In Steel Authority of India (supra) the Apex Court had referred the precedents in Vegoils case (supra) and Gujrat Electricity Board (supra) with approval. Thus it emerges that power to abolish contract labour system vests with the appropriate Government, under section 10 of the Contract Labour Act, and not with any court including the industrial adjudicator. This Tribunal has not been saddled with any responsibility to abolish contract labour in an establishment, on parameters enacted in sub-section (2) of section 10 of the Contract Labour Act.

29. On turning to facts, the Tribunal noted that the claimant detailed facts to the effect that he was working under direct control and supervision of the management. However, ocular facts testified by him remained empty sounded since it could not get any re-affirmation from any other piece of evidence, documentary or otherwise. In other to assess veracity of his claim, the management was called upon to place contract agreements before the Tribunal. Pursuant to directions given, contract agreement entered into between the management and M/s Cool Care Corporation and M/s Ice Berg Corporation, the contractors, are placed over the record. These documents were not questioned by and on behalf of the claimant at all. No efforts were made to assail contents of these contract agreements. When these documents are perused, it came to light that contract was awarded by the management to the contractor for operation of 4 x 40 Tonne Refrigeration capacity central air conditioning plant comprising of 15 Nos. air handling units, 4 Nos. accel compressor units, 10 Nos. chiller/condenser, pumps, consol operation panel, complete with LT cubical type main control panel, AHU panel and allied equipment/accessories connected to AC plant, i.e. including heating system during winter etc. as required. Contract agreements nowhere gives an inference that perfect paper arrangement was made with a view to evade provisions of beneficial labour legislations. As detailed in the contract agreements, contractor was supposed to maintain the AC plant and for that purpose he was required to engage his employees. Engagement of the claimant for maintaining of the said AC plant by the contractor nowhere highlight that the contractor was an agent of the management when services of the claimant were engaged. Contract agreements, referred above, no where bring it over the record that control and supervision was exercised by the management on the work of the claimant. There is vacuum of evidence to the effect that the management used to exercise administrative, financial, managerial and disciplinary control over the claimant. Under these circumstances, it has not come over the record to conclude that the contract agreement(s) were sham and nominal.

30. Claimant could not project that the management adopted a sham device to frustrate provisions of beneficial labour legislations. He could not persuade this Tribunal to conclude that there were circumstances to announce

him to be a deemed employee of the management. In absence of relationship of employer and employee between the parties and contract agreement being found to be genuine, the claimant could not show a right to raise dispute against the management. In view of these reasons, the issue is answered in favour of the management and against the claimant.

Issue No.III

31. No document was brought over the record to the effect that there was an occasion with the management to terminate his services. When claimant was an employee of the contractor, the management was not in a position to dispense with his services. Under these circumstances it cannot be said that the management acted in any manner and terminated his services. No question to assess legality and justifiability of action of the management, in terminating service of the claimant, would arise at all. Under these circumstances the claimant could not establish any claim against the management. In view of reasons detailed above, claim put forward by the claimant fails. He has no case for reinstatement in service of the management. His claim is discarded, being untenable. An award is passed in favour of the management and against the claimant. It be sent to the appropriate Govt. for publication.

Dated : 02.06.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 25 जून, 2014

का.आ. 1900.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर, एमसीडी के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, दिल्ली के पंचाट (संदर्भ संख्या 102/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–16012/02/2012–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th June, 2014

S.O. 1900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 102/2012) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, MCD and their workmen, which was received by the Central Government on 23/06/2014.

[No. L-16012/02/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 102/2012

The President,
CPWD General Mazdoor Union,
C/o Room No.95, Barrackes No.1/10,
Jam Nagar House,
New Delhi - 110001.

...Workman

Versus

The Commissioner,
MCD, Civic Centre,
Kamla Market,
New Delhi.

...Management

AWARD

A beldar was engaged by Municipal Corporation of Delhi (in short the Corporation) on 26.04.2001 against seasonal work. He worked upto 25.03.2003, on different spells of short durations. He raised a demand seeking regularization of his services and grant of pay equal to regular beldars, employed by the Corporation. His demand was not conceded to. On the other hand, he was not engaged any further after 25.3.2003. After a lapse of six years, he raised a dispute before the Conciliation Officer. Since the dispute was contested by the Corporation, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-16012/02/2012-IR(DU), New Delhi dated 31.07.2012 with following terms:

> "Whether the action of the management of Municipal Corporation of Delhi in terminating the services of Shri Salim S/o Shri Keshar Azad, ex-mali with effect from 11.01.2004 is justified or not? It not, what relief will be given to the workman and from which date?"

2. Claim statement was filed by the beldar, namely Shri Salim, claiming that he was employed as mali on muster roll with effect from 26.4.2001 by the Corporation. He was deputed to work at Ward No.92, Seelampur, Welcome Phase III, Shahdara, where he worked continuously upto 10.01.2004. No one months notice or pay in lieu thereof and retrenchment compensation was paid to him, when his services were dispensed with. During course of his employment, he requested the Corporation for regularization of his services and equal pay for equal work, but to no avail. Regular beldars/mali were paid wages in time scale while he was paid only minimum wages fixed for

unskilled labours under the Minimum Wages Act, 1948. Shri Pankaj Kumar, Shri Sanjay Kumar, Shri Anil Kumar, Shri Manoj Kumar and Shri Anil, juniors to him, were also terminated but they were reinstated on the strength of awards, passed by the Labour Court, constituted by Govt. of NCT Delhi. As per its policy, the Corporation was to regularize services of daily rated workers in phased manner. The Corporation took a policy decision to regularize daily wagers appointed from 01.04.2000 to 31.03.2003 with effect from 01.04.2006. He is unemployed since the date of termination of his services. The claimant seeks reinstatement in service of the Corporation with continuity and full back wages.

3. Claim was demurred by the Corporation pleading that it is barred by time and suffers from latches. As per case projected by the claimant, his services were terminated in 2004 whereas claim has been filed in 2010, after a gap of more than 6 years. His claim is stale. No demand notice was served, which fact also makes the dispute incompetent, pleads the Corporation.

4. The claimant was engaged for development work of digging holes/earth, which was of seasonal in nature. His engagement as beldar from 26.04.2001 was not on any permanent/regular nature of work. He was not engaged by way of any regular method of recruitment. His engagement was for intermittent periods from time to time. He was well aware that on completion of seasonal work he would not be engaged any further. When seasonal work came to an end, he was not engaged after 25.03.2003. He never worked for 240 days continuously in any calendar year, muchless in preceding 12 months from the date of alleged termination of his service. His non-engagement after 25.3.2003 was not retrenchment, since it was covered by sub-clause(bb) of section 2(oo)(bb) of the Industrial Disputes Act, 1947 (in short the Act). Since the claimant was engaged on daily wages, hence was rightly paid wages under Minimum Wages Act 1948. He was not entitled to protection under section 25-F of the Act. His claim is misconceived hence deserves to be dismissed, pleads the Corporation.

5. On perusal of pleadings, following issues were settled:

(1) Whether the claim filed by Shri Salim is stale?

(2) As in terms of reference.

6. To substantiate his claim, the claimant entered the witness box. To rebut facts detailed by the claimant, Shri Ravinder Kumar, Assistant Director (Horticulture), gave his evidence. No other witness was examined by either of the parties.

7. Arguments were heard at the bar. Shri B.K.Prasad, authorized representative, advanced arguments on behalf of the claimant. Shri Vishwajit Mangla, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

Issue No. 1

8. First count of attack, made by the Corporation, is that the dispute was raised by the claimant after lapse of 6 years, which fact frustrates the relief in his favour. The claimant argued that no period of limitation is provided by the Act, which may come in his way of raising the dispute after a period of six years. Rival submissions would be addressed to, keeping in view the legal provisions. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay.

9. In Shalimar Works Ltd. (1959 (2) LLJ 26), the Apex Court ruled that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company (1970 (2) LLJ 256) the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. (1975 (2) LLJ 326). In Gurmail Singh (2000 (1) LLJ 1080) Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date he raised the dispute till the date of his reinstatement. In Prahalad Singh (2000 (2) LLJ 1653), the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In Nedungadi Bank Ltd. (2002 (2) SCC 4) a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner. Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in Haryana State Co-operative Land Development Bank (2005 (5) S.C.C. 91). From above decisions, it can be said that the law relating to delay in

raising a reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

10. Factual matrix of the controversy bring it to light that the claimant raised the dispute in early months of year 2012 challenging his alleged termination of services on 11.01.2004. Contra to it, the Corporation presents that the claimant was not engaged after 25.3.2003. The dispute was raised by the claimant some where in early months of year 2012, as emerge out of the reference order. These facts bring it to light that the claimant had raised the dispute after a gap of 6 years. The claimant nowhere details reasons for delay in raising the dispute. No explanation has been offered by the claimant as to what factors persuaded him to wait for a period of six years. However records project the factors which made the claimant to raise the dispute, after a gap of six years. As emerge out, services of juniors to the claimant were also dispensed with by the Corporation. They raised disputes, which were sent to the Labour Court for adjudication by Government of NCT Delhi. Those disputes were adjudicated vide awards dated 18.10.2007, proved as Ex.MW1/W2 to Ex.MW1/W4. Writ petitions, filed by the Corporation, were also dismissed by the High Court. Vide order proved as Ex.WW1/2, they were reinstated in service by the Corporation in June 2010. When the claimant came to know about these developments he raised the dispute for adjudication. Thus, it is evident that till order of reinstatement was passed in favour of juniors of the claimant, he was satisfied with his fate. When his juniors were reinstated in service he attempted to rejuvenate the stale claim. His claim is based on facts which are distinct and different than the facts which became bedrock for awards Ex.MW1/W2 to Ex.MW1/W4, as noted in subsequent sections. Attempt was made to rehabilitate the facts which lost its vigour, on being stale. Absence of an explanation makes the delay of six year as inordinate and unexcusable. It is crystal clear that the dispute was stale. There was no industrial dispute in existence or could be even said to have been apprehended in the year 2012, when the appropriate Government applied its mind to the facts of the present controversy. The dispute is liable to be thrown out on this count alone. The issue is answer in favour of the Corporation and against the claimant.

Issue No. 2

11. The Corporation made second prong of attack on the dispute agitating that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. This fact also remained uncontroverted. The claimant admits during the course of his cross examination that he had not moved any application before the Corporation, seeking his reinstatement in service. Thus, it emerged that notice of demand was not served by the claimant, before raising the dispute.

12. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

13. An industrial dispute comes into existence when the employer and the workmen are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd.(1968(1) LLJ 834), the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd. (1970 Lab.I.C. 421), High Court of Delhi went a step ahead and held that "...demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

14. The decision in Sindhu Resettlement Corporation Ltd. (supra) was followed by Orissa High Court in Orissa Industries Pvt. Ltd. (1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd.(1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists (1961 (2) LLJ 436) had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal (1978(1) LLJ 484), the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry

Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was contested by the employer. Appreciating all these facts, the Apex Court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

15. In New Delhi Tailor Mazdoor Union [1979 (39) F.L.R. 195], High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

16. The High Court of Madras in Management of Needle Industries [1986(1) LLJ 405] has held that dispute or difference between management and the workman automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particularly in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists(supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. [1984 (2) LLJ 259].

17. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal (supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

18. Facts detailed above highlight that the claimant had not projected that a demand notice was served on the Corporation, seeking reinstatement in service. These facts make stand taken by the Corporation to be worthy of credence. The Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute. The dispute is liable to be discarded on this count too.

19. Assuming for sake of argument that the dispute was not stale and there was an oral notice of demand, even then the claimant has no case on merits. As conceded by him, he worked only for 34 days from 26.04.2001 to 02.06.2001, 80 days from 21.09.2001 to 22.12.2001, 76 days from 16.09.2001 to 12.12.2002 and 70 days from 03.01.2003 to 25.03.2003. The spell of periods referred above make it apparent that he worked for short duration with the Corporation, in case of exigencies only. However he tried to assert that he continuously worked with the management till date of termination of his service. Except his bald statement, no evidence was brought over the record by the claimant to show his continuous service for a period of 240 days in a calendar year.

20. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days,

then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

21. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

22. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

23. Shri Ravinder Kumar, Assistant Director (Horticulture) deposed in bold words that the claimant rendered service with the Corporation in four spells at different intervals. He declares that the claimant never rendered continuous service for 240 days in any calendar year. Except the fact that the claimant relied seniority list Ex.WW1/1 and awards Ex.MW1/W2 to Ex.MW1/W4, he had not brought any evidence which may persuade the Tribunal to record findings relating to his rendering continuous service of one year, as contemplated by section 25 B of the Act. Seniority list Ex.WW1/1 details list of beldars engaged by the Corporation from time to time. In the said list, date of their engagement, authority who ordered for their engagement, continuity in service/break in service as well as period for which they have worked have been detailed. Name of the claimant finds place at serial No.46 of the said list, wherein it has been mentioned that he was engaged for the first time on 26.04.2001 on the orders of the Commissioner of the Corporation. It is also detailed therein that there were breaks in service and his services never remained continuous. Therefore, this document nowhere project that the claimant rendered continuous service of one year.

24. The claimant could not bring it over the record that he was engaged for any other period, than the spells referred above. When above spells of period are taken into account, besides reckoning Sundays and three national holidays, it nowhere bring to light that the claimant rendered continuous service of 240 days in any calendar year. It is concluded that service rendered by the claimant was for very brief spells and there was no occasion for him to render 240 days continuous service in any of the calendar years.

25. The claimant was not engaged any further after 25.03.2003. Whether his disengagement amounts to retrenchment within the meaning of section 2(oo) of the Act? For an answer, definition of the term "retrenchment" is to be construed. Clause (oo) of section 2 of the Act defines retrenchment, which definition is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

26. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

27. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" presupposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla [1987 Lab. I.C. 1607], Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and Balbir Singh [1990 (1) LLJ. 443].

28. Termination of service of casual workman on daily wage will not fall within the exception contained in sub-clause (bb) of section 2(oo) of the Act, became the "contract of employment" is referable to the contract other than engagement of causal workers on daily wages. "Non-renewal of the contract of employment" presupposes an existing contract of employment which is not renewed. Even in respect of a daily wager a contract of employment may exist, such contract being from day to day. Hence this clause does not contemplate to cover a contract such as daily wager and is rather intended to cover more general class of contracts where a regular contract of employment is entered into and termination of service is because of non-renewal of contract. The claimant being a daily wager does not fall within the mischief of sub-clause (bb) of section 2 (oo) of the Act. Therefore, it is concluded that action of non-engagement of the claimant after 25.03.2003 amounts to retrenchment.

29. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

30. Since the claimant has not rendered continuous service of one year as contemplated by section 25 B of the Act, provisions of section 25F of the Act nowhere comes into play. Claimant asserts that services of his juniors, namely Shri Pankaj Kumar, Shri Anil Kumar, Shri Manoj Kumar were dispensed with, in whose favour awards Ex.MW1/W2 to Ex.MW1/W4 were passed. I have gone through those awards wherein the Labour Court,

constituted by Government of NCT Delhi, concluded that they have rendered continuous service of 240 days in preceding 12 months from the date of termination of their services. In view of these different and distinct facts, the Labour Court ordered for their reinstatement. However, in the present controversy, the claimant is placed on different pedestal. Therefore, reinstatement of his juniors on the strength of the awards, referred above, would not accord any accolade to the claimant. As concluded above, claimant is not entitled to any relief on merits too. He is not entitled to any relief, not to talk of relief of reinstatement in his service. Action of the Corporation of in not engaging the claimant any further cannot for faulted. No illegality can be imputed to that action of the Corporation. An award is, accordingly, passed in favour of the Corporation and against the claimant. It be sent to the appropriate Government for publication.

Dated : 02.06.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 25 जून, 2014

का.आ. 1901.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, अशोक होटल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, दिल्ली के पंचाट (संदर्भ संख्या 44/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–42011/80/2011–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 25th June, 2014

S.O. 1901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 44/2012) of the Central Government Industrial Tribunal/Labour Court No.1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, M/s. Ashok Hotel and their workman, which was received by the Central Government on 23/06/2014.

[No. L-42011/80/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No.44/2012

The President,
Ashok Hotel Mazdoor Janta Union,
Staff Qutn. No.C-48-49, 50-B,
Chanakyapuri,
New Delhi - 110021 ...Workman

Versus

The General Manager,
M/s Ashok Hotel,
50-B, Chanakyapuri
New Delhi - 110021

...Management

AWARD

Ashok Hotel (hereinafter referred to as the Hotel) invited applications for five posts of Assistant Grade II to be filled by way of promotion from amongst employees serving as Assistant Grade I and Junior Stenographer Grade I, vide circular dated 15.04.2009. Shri Ram Prakash Goyal, Shri Kuldeep Singh and Shri Balwan Singh, the claimants, besides others, applied against the advertisement, so made by the Hotel. Interview letters were issued to them, requiring them to appear for interview on 08.09.2009. However, on 07.09.2009, the Hotel cancelled the interview on some administrative reason, notifying that fresh date would be intimated separately. Unfortunately, fresh date was not intimated to the claimants, besides others for interview. In the meantime, recommendations of Cadre Review Committee were approved, vide settlement dated 12.12.2009. Recommendations of Cadre Review Committee became operative from the date of settlement, referred above. In those recommendations, eligibility criteria for promotion to the post of Assistant Grade II was changed. Claimants did not remain eligible for promotion to those posts. A demand was raised on behalf of the claimants, seeking their promotion on the basis of eligibility criteria existing as on 15.04.2009, which demand was not conceded to by the Hotel. Constrained by these facts, the claimants approached the Ashok Hotel Mazdoor Janta Union (hereinafter referred to as the union) for redressal of their grievance. The union took up their cause and raised a dispute before the Conciliation Officer. Since the Hotel contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42011/80/2011-IR(DU), New Delhi dated 02.02.2012 with following terms:

> "Whether the action of the management of Ashok Hotel (a unit of ITDC), New Delhi in depriving the promotion to (I) Shri Ram Prakash Goyal (Token No.4203) S/o Shri S.N. Goyal, (II) Shri Kuldeep Singh (Token No.4304) S/o Shri Raghbir Singh and (III) Shri Balwan Singh (Token No.4214) S/o Shri Ram Prasad to the post of Senior Assistant Grade II in the scale of Rs.5600-9050 by not holding the Schedule interview fixed for 08.09.2009 is legal and justified? What relief the workmen are entitled to and from which date?"

2. Claim statement was filed by the claimants, pleading therein that pursuant to daily order No.13 dated 15.04.2009, the Hotel invited applications from eligible employees for promotion to five posts of Assistant Grade II, in the pay scale of Rs.5600-9050. They applied for promotion to those posts and were called for interview on 08.09.2009. However, the Hotel intentionally postponed the interview without assigning any reason, vide letter dated 07.09.2009. Interview for the posts of Assistant Grade II was not scheduled by the Hotel till 28.07.2011, to deprive them of their rights.

3. The claimants approached the union to espouse their cause. Demand notice dated 02.08.2010 was sent, but to no avail. Claimants seek an award in the form of directions to the Hotel to promote them as Assistant Grade II in the pay scale of Rs.5600-9050, now revised to Rs.10140-24880, with effect from 08.09.2009.

4. Claim was demurred by the Hotel pleading that promotion cannot be claimed as a matter of right. It falls within administrative realm of the Hotel to consider an employee for promotion to a higher post. As such, dispute raised is not an industrial dispute. Dispute has not been espoused by the union as per provisions of Industrial Disputes Act, 1947 (in short the Act) and as such cannot be termed as an industrial dispute. The Central Government is not the appropriate Government to refer the dispute under reference for adjudication, pleads the Hotel.

5. The Hotel nowhere disputes the factum of calling applications from eligible employees for promotion to five posts of Assistant Grade II, vide its order dated 15.04.2009. It is also not disputed that the claimants applied for promotion and were called for interview, which was scheduled for 08.09.2009. It is also an admitted fact that interview scheduled for 08.09.2009 was postponed, vide letter dated 07.09.2009, detailing therein that fresh date of interview would be notified separately The Hotel presents that major restructuring exercise in the form of Cadre Review Committee was taken, recommendations of which Committee were approved on 12.12.2009. As per reformulated cadre, eligibility criteria for the post of Assistant Grade II was changed. Claimants were not qualified for promotion to the post of Assistant Grade II, in view of eligibility criteria recommended for the said post by the Cadre Review Committee.

6. The union was a party to the recommendations of the Cadre Review Committee, which were approved on 12.12.2009. The union is estopped from raising any issue on recommendations, which were given favourable nod by it. Since the claimants were not eligible for promotion in view of change in eligibility criteria for the post, their claim is not maintainable. The Hotel seeks rejection of the claim statement, filed by the claimants.

7. Shri S.S. Upadhyay, Shri Ram Prakash Goyal, Shri Kuldeep Singh and Shri Balwant Singh entered the witness box to testify facts in favour of the claimants. Shri Lohit Joshi, Manager (H.R.) gave evidence on behalf of the Hotel. No other witness was examined by either of the parties.

8. Arguments were heard at the bar. Shri S.S. Upadhyay, authorized representative, advanced arguments on behalf of the claimants. Shri B.K. Singh and Shri Anurag Ranjan, authorized representatives, assisted by Shri Lohit Joshi, advanced arguments on behalf of the Hotel. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:

9. At the outset, the Hotel contended that the dispute raised was not espoused in consonance with the provisions of the Act, hence it did not acquire status of an industrial dispute. Shri Singh claimed that an individual dispute has been raised for adjudication, which does not give jurisdiction to this Tribunal to articulate it. Contra to it, Shri Upadhyay claims that the dispute was espoused by the union vide its resolution dated 11.06.2010, hence it answers all ingredients of an industrial dispute. According to him, submissions made on behalf of the Hotel are uncalled for.

10. Since the Hotel claims that an individual dispute has been raised for adjudication, it would be expedient to know as to what the term "industrial dispute" means. For an answer to this proposition, definition of the term 'industrial dispute' is to be construed. Section 2(k) of the Act defines the term 'industrial dispute', which definition is extracted thus:

> "2 (k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

11. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with –(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

12. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and

employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the Hotel no where dispute that the claimants are not a workmen, within the meaning of clause (s) of section 2 of the Act.

13. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate (1958 (1) LLJ 500) and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workmen raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

14. In Kyas Construction Company (Pvt) Ltd. (1958 (2) LLJ 660), the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute "is wide enough to cater a dispute raised by the employer's workman with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist (1961 (II) LLJ 436) has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

15. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan (1957(1) LLJ 27) the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand (1965 (1) LLJ 668) it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited (1970 (1) LLJ 132). However in Western India Match Company (1970 (II) LLJ 256), the Apex Court referred the precedent in Dimakuchi Tea Estate's case (1958 (1) LLJ

500) and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

16. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran (1970 (1) LLJ 558).

17. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works (1970 (1) LLJ 507) complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

18. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited (1974 (II) LLJ 34). For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. (1970 (II) LLJ 256).

19. To project espousal by the union, Shri Upadhyay deposed in his affidavit Ex.WW1/A, tendered as evidence, that the claimants approached the union for redressal of their grievance. Working Committee meeting of the union was held on 11.06.2010 where their grievances were considered and a decision was taken to take up their case as its own. He had proved resolution dated 11.06.2010 as Ex.WW1/1. During course of cross examination, Shri Ram Prakash Goyal deposed that meeting of the union took place on 11.06.2010 at 3 p.m. at its office premises located at Staff Quarters, Ashok Hotel, Chanakyapuri, New Delhi. He also proved copy of minutes of the meeting as Ex.WW1/1. Facts unfolded by Shri Upadhyay and Shri Ram Prakash Goyal in that regard could not be dislodged by the Hotel when the witnesses were made to face rigours of cross examination.

20. The Hotel questioned the resolution Ex.WW1/1 on the count that names of the claimants did not appear therein. It has also been agitated that the claimants were not members of the union. Hence, there was no occasion for the union to espouse their cause. To appreciate submissions advanced, I have scanned Ex.WW1/1. It emerged that 20 members of the Working Committee of the union participated in the meeting dated 11.06.2010 and resolution was adopted to raise grievance of the claimants, relating to inaction of the Hotel for their promotion on the posts of Assistant Grade II. It is evident that the union took up cause of the claimants as their own and authorized Shri Upadhyay to initiate action in that matter. Collective

will was shown by the union in the cause of the claimants and took it as its own. As held above, the union can espouse cause of a person who may not even be a workman. It is not necessary for a claimant to be a member of a union to enable it to espouse his cause. An union may espouse a dispute with regard to non-employment of others, who may not be employed as workman at the relevant time. A person, whose dispute may be espoused by an union, cannot be its member when he is not in the employment of the management at the relevant time. Thus, it is evident that objection raised by the Hotel to the effect that the claimants were not members of the union has no substance. The union espoused cause of the claimants through its resolution Ex.WW1/1. The dispute raised by the union answers all ingredients of an industrial dispute within the meaning of section 2(k) of the Act. Contention advanced by the Hotel in that regard is brushed aside.

21. The Hotel claims that the appropriate Government for the dispute under reference is the Government of NCT Delhi. For an answer to this proposition, it is expedient to note as to for what dispute the Central Government is the appropriate Government. Clause (a) of section 2 of the Act defines appropriate Government. It would be expedient to know definition of phrase "appropriate Government". Consequently, definition of the phrase "appropriate Government" is extracted thus:

"2(a) "appropriate Government" means -

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment)Act, 1948(9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948(34 of 1948), or the Board of Trustees and the State Board of Trustees section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956(31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961(47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)or the Banking Service Commission Act 1975 or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, an company in which not less than fifty one percent of the paid up share capital is held by the Central Government, or any Corporation, not being a Corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

(ii) in relation to any other industrial dispute, the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government;

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the

State Government, as the case may be, which has control over such industrial establishment;

22. In relation to an industrial dispute, appropriate Government can either mean the Central Government or the State Government. The Central Government has been defined under section 3(8) and the State Government under section 3(60) of the General Clauses Act, 1897. In relation to an industrial dispute concerning -

1. an industry carried on or under the authority of the Central Government, or a railway company, or
2. an such controlled industry as may be specified in this behalf by the Central Government, or
3. a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or
4. the Industrial Finance Corporation of India Limited formed and registered under the companies Act, 1956, or
5. the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or
6. the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or
7. the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or
8. the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or
9. the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or
10. the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or
11. the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or
12. the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or
13. the Food Corporation of India established under section 3 of the Food Corporation Act, 1964 (37 of 1964), or
14. a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or
15. the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or
16. a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976),or
17. the Export Credit and Guarantee Corporation Limited, or
18. the Industrial Reconstruction Bank of India Limited, or
19. the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or
20. an air transport service, or
21. a banking company, or
22. an insurance company, or
23. a mine, or
24. an oil-field, or
25. a Cantonment Board, or
26. a "major port, or
27. any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or
28. any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or
29. the Central public sector undertaking, or
30. subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government,

the appropriate Government would mean the Central Government".

23. In relation to an industrial dispute appropriate Government can either mean Central Government or State Government. In relation to any industrial dispute, other than those specified in sub clause (i) of clause (a) of section 2 of the Act, appropriate Government would be State Government. In other words, all industrial disputes which are outside the purview of sub-clause (i) are concern of the State Government under sub-clause (ii) of clause (a) of Section 2 of the Act. Thus, the general rule is that an

industrial dispute raised between employer and his employee would be referred for adjudication by the State Government, except in cases falling under section 2(a)(i) of the Act. Consequently, where industrial dispute which does not fall within the ambit of section 2(a)(i) of the Act, appropriate Government cannot be the Central Government.

24. It is not a matter of dispute that the Hotel is a unit of Indian Tourism Development Corporation (in short the Corporation), a public sector undertaking, working under the charge of the Ministry of Tourism, Government of India, New Delhi. The Corporation is a prime mover in the progressive development, promotion and expansion of tourism in the country. The objectives, for which the Corporation came into existence in October 1966, are:

i. To construct, take over and manage existing hotels and market hotels, Beach Resorts, Travellers' Lodges/Restaurants,

ii. To provide transport, entertainment, shopping and conventional services

iii. To produce, distribute, tourist publicity material,

iv. To render consultancy-cum-managerial services in India and abroad,

v. To carry on the business as Full-Fledged Money Changers (FFMC), restricted money changers etc., and

vi. To provide innovating, dependable and value for money solutions to the needs of tourism development and engineering industry including providing consultancy and project implementation.

25. The Hotel is a unit of the Corporation. The Corporation works under the Ministry of Tourism, Government of India, New Delhi. These facts are sufficient to conclude that the Corporation or the Hotel, as the case may be, is an industry carried on by or under the authority of the Central Government. In view of these reasons, it is announced that the appropriate Government for the dispute, under reference, is the Central Government and not the Government of NCT Delhi. Submissions made in that regard by the Hotel, being uncalled for, are discarded.

26. On coming to factual matrix it became apparent that Shri Ram Prakash Goyal deposed that applications were invited by the Hotel from amongst eligible candidates for promotion to the posts of Assistant Grade II, vide letter dated 15.04.2009, which is Ex.WW2/1. This advertisement is not a matter of dispute. When this document is scanned, it emerged that five posts of Assistant Grade II were advertised, out of which one was reserved for candidates belonging to scheduled tribe communities while 4 posts were available to the candidates of general categories. Eligible employees were called upon to submit their applications on the prescribed proforma. The incumbents were required to have rendered three years satisfactory service as Junior Assistant Grade I/Junior Stenographer Grade I in the pay scale of Rs.5310-8360 or they should have moved to the scale of Rs.5310-8360 and should have completed prescribed number of years service by taking together service rendered in of pay-scale of Rs.5310-8360 and scale of Rs.5050-7900. Eligibility criteria was fulfilled by the claimants and they were called for interview on 08.09.2009, as emerge out of Ex.WW2/3. Names of claimants find place in Ex.WW2/3. Interview, scheduled for 08.09.2009, was postponed owing to some administrative reason, not made known as Ex.WW2/4 depicts. It was notified therein that fresh date of interview would be intimated separately. These facts are not disputed by and on behalf of the Hotel. Facts unfolded by Shri Ram Prakash Goyal were reaffirmed by Shri Kuldeep Singh and Shri Balwan Singh. Shri Lohit Joshi opted not to question facts, referred above.

27. Question for consideration would be as to whether postponement of interview, to be held on 08.09.2009, was on account of conscious decision taken by the Hotel not to fill up those posts till report of Cadre Review Committee was to be submitted and approved? Ex.WW2/4 makes it apparent that interview was postponed on account of some administrative reason, kept close to its heart by the Hotel. It was not notified that awaiting report of Cadre Review Committee, interview scheduled for 08.09.2009 was postponed. Furthermore Ex.WW2/4 makes it clear that the applicants were informed that a fresh date would be intimated separately. Intimation to the applicants, to the effect that fresh date would be informed separately, makes it apparent that administrative decision to postpone the interview was not owing to the decision of the Hotel to await report of the Cadre Review Committee. Language used in Ex.WW2/4 gives room for conclusion that process for selection of candidates for the posts of Assistant Grade II, out of eligible employees working with the Hotel, was still open. It was deferred for some administrative reason, not disclosed by the Hotel to the claimants and the Tribunal. Had there been a conscious decision to defer filling of posts of Assistant Grade II till submission of the report of Cadre Review Committee, the Hotel would have made known that fact to the claimants as well as to the Tribunal, during the course of adjudication. An eerie silence was maintained in that regard and it was only agitated that some administrative reason was behind postponement of interview, scheduled for 08.09.2009. Therefore, it cannot be said that owning to conscious decision, taken by the Hotel to fill up post of Assistant Grade II after receipt of report of Cadre Review Committee, interview scheduled for 08.09.2009 was postponed.

28. Report of Cadre Review Committee was accepted by the authorities on 12.12.2009. Resultantly a circular was issued by the Hotel on 04.02.2010, which has been

proved as Ex.MW1/2. Perusal of Ex.MW1/2 makes it clear that recommendations of Cadre Review Committee were made effective from 12.12.2009. Thus, it is evidence that recommendations for Cadre Review Committee were prospective and not given any retrospective operation.

29. Eligibility criteria for promotion to the post of Assistant Grade II stood changed, as is evident out of Ex.MW1/2. 40% of posts were to be filled by way of direct recruitment and 60% by way of promotions. For promotion, an incumbent was supposed to render minimum three years satisfactory service in the scale of Rs.5310-8360 for Junior Assistant Grade I. The eligibility criteria was different than the eligibility criteria, prescribed in Ex.WW2/1. New eligibility criteria was applicable since 12.12.2009 and not prior to that date.

30. Whether posts which fell vacant prior to April, 2009 would be covered by the recommendations of Cadre Review Committee? Answer is simple. By approval of report of Cadre Review Committee, the Hotel has changed eligibility criteria for promotion to the post of Assistant Grade II. However, on the date when 5 posts of Assistant Grade II fell vacant, an incumbent was required to render three years satisfactory service as Junior Assistant Grade I/Junior Stenographer Grade I in the pay scale of Rs.5310-8360 or he should have moved to the scale of Rs.5310-8360 and should have completed prescribed number of years service by taking together service rendered in pay scale of Rs.5310-8360 and scale of Rs.5055-7900. According to that eligibility criteria the claimants were eligible for promotion. However, when report of Cadre Review Committee was implemented with effect from 12.12.2009, none of the claimants remained eligible for promotion to those posts. It is well settled proposition of law that posts which fell vacant prior to the amendment of rules, would be governed by the old rules and not by the new rules. Law to this effect was laid by the Apex Court in Y.V. Rangaiah [1983(3) SCC 284], R. Dayal [1997(10) SCC 419], P.Ganeshawar Rao [1988 (Supp) SCC 740] and Dr. K. Ramulu [1997(3) SCC 59].

31. High Court of Delhi had an occasion to consider the proposition as to whether amended rules would apply to posts fallen vacant prior to the date of amendment of the rules in Dr. Sahadeva Singh (Manu/DE/0655/2012). After consideration of catena of decisions on the subject, it was ruled that vacancies which had arisen prior to coming into force of new rules, would be filled under old rules. The court formulated legal propositions on the issue, which are as follows:

> "The propositions of law which emerge from a combined perusal of the above-referred decisions can be summarized as under:-
>
> (a) The general rule is that the vacancies which exist on the date of amendment of rules have to be filled up in accordance with the rules, as they stood prior to amendment, provided the amendment is not retrospective. If the amendment made in the rules is retrospective, even the vacancies which exist on the date of amendment are also required to be filled up as per amended rules;
>
> (b) The Competent Authority may take a decision to amend the rules and fill up all the vacancies in accordance with the amended rules. If such a decision is taken by the Competent Authority, that would justify the delay in making the promotion, against the existing vacancies. In such a case, all the vacancies, including the vacancies which existed on the date of amendment of the rules can be filled up as per the amended rules;
>
> (c) The decision to amend the rules needs to be taken by the authority which is competent to amend the rules and if such a decision is taken by some authority other than the authority competent to amend the rules and the rules are later amended, the vacancies which existed on the date of amendment of the rules have to be filled up in accordance with the rules as they stood prior to amendment."

32. As noted above, 5 posts of Assistant Grade II had fallen vacant prior to April 2009. Those posts were advertised to the employees by the Hotel vide letter dated 15.04.2009 when they were called upon to submit their application in consonance with the eligibility criteria, on the prescribed format. Applications were scrutinized and eligible candidates were called for interview, which was scheduled for 08.09.2009. However, on 07.09.2009, owing to some administrative reason, interview was postponed, informing the applicants that fresh date of interview would be intimated separately. Thus, it is evident that the Hotel had not taken a decision to amend the rules and then fill up posts of Assistant Grade II in consonance with amended rules.

33. Recruitment, Promotion and Seniority Rules, 1982 (in short the old Rules) are scanned to note as to whether any guidelines are provided for holding Departmental Promotion Committee meeting. I could not lay my hands on any such calendar for holding of Department Promotion Committee meeting. Shri Singh, on being assisted by Shri Lohit Joshi, Manager(HR), made a candid admission that no such calendar was provided in the old rules. Shri Joshi presents that in the Recruitment, Promotion and Seniority Rules, 2010 (hereinafter referred to as the New Rules), the Hotel is supposed to convene Departmental Promotion

Committee meeting twice a year, first in January and subsequently in July to asses candidature of eligible incumbents for promotion to a post. They Hotel was called upon to explain as to whether guidelines issued by the Government of India vide office memorandum No.22011/ 9/98-Esss(D) dated 08.09.1998 read with office memorandum No.22011/9/98-Esss(D)dated 13.10.1998 and office memorandum No.22011/9/98-Esss(D) dated 14.12.2000 would be applicable to it, when there was vacuum in the old rules in that regard. Shri Singh as well as Shri Joshi could not project any reasons to dislodge applicability of those guidelines to the Hotel. As per guidelines contained in the aforesaid office memorandums, DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, integrity certificates, seniority list, etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g. 1st Apirl or May. The Ministries/ Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule, the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that the Recruitment Rules for a post are being reviewed / amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressively given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

34. Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year. The requirement of convening annual meeting of the DPC should be dispensed with only after a certificate has been issued by the Appointing Authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question.

35. In view of above instruction on holding DPCs, it would be taken note of as to whether an employee has a vested right for promotion to next higher post. Law deciphers a right of being considered for promotion in favour of an employee. He cannot claim promotion as a matter of right. It is a matter of discretion of the management to select persons for promotions, held Constitutional Bench of the Apex Court in Brooke Bond (India) (Pvt.) Ltd. [1963 (1) LLJ 256]. But three Judge Bench of the Apex Court in Hindustan Lever Ltd. (1984 Lab.I.C. 1573) suggested that it is time to reconsider this archaic view of laissez faire days where promotion was considered as management function because the whole gamut of labour legislation is to check, control and circumscribe uncontrolled managerial exercise of power with a view to eschew the inherent arbitrariness in exercise of such functions. However, law laid in Brook Bond India Pvt. Ltd, (supra) rules the field. It was laid therein that though promotion is a managerial function, "it may be recognized that there may be occasions when a tribunal may have to interfere with promotions made by the management where it is felt that persons superseded have been so superseded on account of malafides or victimization."

36. Promotion generally necessitated consideration of competitive suitability of the eligible workmen and such selection process would require the consideration 'not only of the past performance of those eligible but necessitates making of comparative estimate of their skill, sometimes of technical nature, their personality, capacity to discharge heavier responsibilities and similar other factors. Whether a particular employee should be promoted from one grade to higher grade depends not only on the length of service but also on his efficiency and other qualifications for the post to which he seeks to be promoted and in the matter of promotion, intimate knowledge of the higher authority, empowered to promote, have greater value. Seniority plays only a small part in the matter of promotion. In the absence of any malafide, unfair labour practice or victimization, discretion of the management cannot be questioned. Reference can be made to the precedent in Reserve Bank of India [1965 (2) LLJ 175].

37. When malafide, unfair labour practice or victimization is alleged by the workmen, adjudicator will have to enquire whether granting or withholding of certain promotion is malafide or act of unfair labour practice or victimization. If he finds that the promotions in question have been made, which are unjustified on any one of these grounds, appropriate course for him is to set aside the promotions and ask the employer to consider the cases of superseded employees and decide for himself whom to promote after considering the records of the employees worth consideration, except of course the persons whose promotions have been set aside. In other words, when the Tribunal finds that some workers are superseded on account of legal malafide, it may have to cancel the promotions made by the employer. See Williamson Magor & Co. [1982 (1) LLJ 32].

38. The Tribunals are intended to adjudicate industrial disputes between the management and the workmen, settle them and pass effective awards in such a way that industrial peace between the employees and the employer may be maintained so that there can be more productions and benefit of all concerned. For the above purpose, industrial tribunal, as far as practicable, shall not be constrained to formulate rules of laws and avoid any inability to arrive at an effective award of justice in a particular dispute. In view of the findings, first of all it should be declared that the promotions were illegal and unjustified being an act of arbitrary action of the management and cancel those promotions. Thereafter, the Tribunal should ask the management to consider the cases again and to promote the eligible employees. But even after finding of malafide or victimization, it is not within the competence of the Tribunal to consider merits of various employee and then to decide to whom to promote. See Brooke Bond India Pvt. Ltd. (supra).

39. Here in the case the Hotel deferred process of promotion to the posts of Assistant Grade I in an arbitrary and unjustified manner. Appointment of Shri Sudhir Kumar Khurana, who was junior to the claimants, to officiate against the post of Sr.Assistant Grade II with effect from 28.5.2009 bring malafides and unfair labour practice on the part of the Hotel over the record. All these facts make it apparent that action of the Hotel cannot be allowed to sustain. Shri Ram Prakash Goyal and Shri Kuldeep Singh were found eligible for promotion and were promoted to the posts of Assistant Grade II on 29.07.2011, which fact make it clear that their right of being considered for promotion has matured into a right of being promoted. Had the interview been held as per schedule referred above, the Hotel would have been constrained to promote them, as they were eligible for promotion. Right of Shri R.P. Goyal and Shri Kuldeep Singh was frustrated, without any reason and for no fault of theirs. On the other hand, Shri Sudhir Kumar Khurana who was too junior to them was allowed to officiate as Assistant Grade II by the Hotel. These facts bring it to light that with a view to deprive Shri Ram Prakash Goyal and Shri Kuldeep Singh of their right of being promoted, the Hotel delayed process of interview. Consequently this Tribunal finds it to be a proper case to command the Hotel to promote Shri Ram Prakash Goyal and Shri Kuldeep from 31st December 2009, by which time process of promotion would have been completed by the Hotel.

40. Shri Balwan Singh superannuated and could not be considered for promotion. It is not a matter of dispute that Shri Sudhir Kumar Khurana, who was junior to Shri Balwan Singh, was allowed to officiate as Senior Assistant Grade II in the scale of Rs.5600-9050, vide order Ex.WW2/7. Conditions on which he was allowed to officiate, as detailed in Ex.WW2/7, are extracted thus:

"Shri Sudhir Kumar Khurana, Junior Assistant, Grade I, Token No.4301 in the scale of Rs.5310-8360 is hereby appointed to officiate against the post of Senior Assistant Grade I in the scale of Rs.5600-9050 with effect from 28.05.2009. He is entitled to the payment of officiating pay at the rate of 10% of his basic pay with effect from 28.06.2009, i.e. after he has worked against the higher post for one month subject to the following conditions:

(i) The officiating pay at the rate mentioned above will be admissible to Shri Sudhir Kumar Khurana subject to the condition that his basic pay plus officiating pay so granted shall not exceed the pay which would have been admissible to him had he been promoted to the higher of Senior Assistant Grade II against which he is officiating.

(ii) The officiating pay as sanctioned above shall cease to be admissible to him with effect from the date the duties and responsibilities of higher post entrusted to him are withdrawn or from the date he ceases to hold the charge of the said post.

(iii) The grant of officiating pay as above shall not by itself confer on him any right or title for claiming regular appointment to the higher post.

Shri Sudhir Kumar Khurana, in addition to assisting Bills & Credit in legal matters will co-ordinate, follow up and supervise court cases of HR Department and Accounts (Bills & Credit) of The Ashok and will functionally report directly to the Vice President (Legal). He will continue to be under administrative control of the General Manager(Ashok) and the seniority will also remain in his parental department. The matters pertaining to the concerned departments of The Ashok will be routed through proper channel.

This issues with the approval of the Competent Authority."

41. Shri Singh argued that officiating appointments are made by the Hotel in consonance with office order No.10(67)/78-PHQ dated 15.07.1980. According to him, as per said order generally officiating appointments are made in order of seniority. However, he projects that merit, qualification, experience, aptitude, growth potential and immediately availability of an employee is to be kept in view while making such an arrangement. When called upon to explain as to whether all these merits were with Shri Balwan Singh or not when he was denied officiating appointment for the post of Senior Assistant Grade II by the Hotel, Shri Singh had to cut a sorry figure. He could not rebut that Shri Balwant Singh was having merit,

qualification, experience, aptitude, growth potential and immediately availability to work as Senior Assistant Grade II. It is emerging over the record that in an arbitrary manner, a junior was allowed to officiate and claim of a senior was discarded.

42. Can management be permitted to discard senior and promote a junior in officiating capacity? Answer lies in negative. In Bal Kishan [1990 (I) LLJ 61] the Apex Court announced that no junior shall be confirmed or promoted without considering the case of his senior. The observations made by the Apex Court are reproduced thus :

> "In service, there could be only one norm for conferment or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from their being contrary to Article 16(1) of the Constitution."

43. Appointment of a junior to the post of Senior Assistant Grade II by the Hotel was violative of fundamental rights available to Shri Balwan Singh. The Hotel cannot negate his fundamental rights, while making appointment of a junior to the post of Senior Assistant Grade II, even in officiating capacity. In view of these reasons the Tribunal will come to rescue of Shri Balwan Singh and accord his fundamental rights.

44. Shri Ram Prakash Goyal and Shri Kuldeep Singh were denied promotion by the Hotel in an arbitrary manner. Process of promotion was stalled illegally to frustrate their right of being considered for promotion. Subsequently, they were promoted, relying provisions of new Rules. They were to be promoted, in accordance with provisions of old rules. In view of these facts, the Hotel is commanded to promote Shri Ram Prakash Goyal and Shri Kuldeep from 31st December, 2009 and grant officiating allowance to Shri Balwan Singh from the date Shri Sudhir Kumar Khurana was given appointment on the post of Assistant Grade II in officiating capacity. An award is, accordingly, passed. It be sent to the appropriate government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 04.06.2014

नई दिल्ली, 26 जून, 2014

का.आ. 1902.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट ऑफ पोस्ट ओफिसेस, यवतमाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या CGIT/NGP/01/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–40012/65/2010–आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/NGP/01/2011) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Superintendent of Post Office, Yavatmal and their workman, which was received by the Central Government on 24/06/2014.

[No. L-40012/65/2010-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/01/2011 Date: 04.06.2014.

Party No. 1 : The Supdt. of Post Offices, D/o. Post, Yavatmal Division, Yavatmal (MS).

Versus

Party No. 2 : Shri Vasant Shivaji Wadhai R/o. Akhada Ward, Pandharkawada, Teh. Kelapur Yavatmal (MS).

AWARD

(Dated: 4th June, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Post Office and their workman, Shri Vasant Wadhai, for adjudication, as per letter No. L-40012/65/2010-IR (DU) dated 22.03.2011, with the following schedule:-

> "Whether the action of the management of Superintendent of Post Offices, Department of Post, Yavatmal Division, Yavatmal (MS) in dismissing the services of Shri Vasant Shivaji Wadhai w.e.f. 30/03/1996 is legal and justified? What relief is the workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Vasant

Wadhai, ("the workman" in short) filed the statement of claim and the management of Post Office, ("party no.1" in short) filed the written statement.

The case of the workman is that he was appointed in the services of party no.1 as an E.D. Packer w.e.f. 31.07.1979 and his appointment was confirmed by party no.1 vide its order dated 05.09.1979 and while working at Pandharkawda Post Office, there occurred a case of shortage of cash of Rs. 15,000 and party no.1 immediately lodged a police complaint with the police authorities and on the basis of the complaint, a criminal case was filed in the court of Chief Judicial Magistrate, Yavatmal bearing no. RCC 292/ 97 and in the said case he was named as an accused alongwith one Shri Namdeo Nagorao Bokade and after trial of the case, the Chief Judicial Magistrate vide order dated 03.05.2007 acquitted both of them and in the midst of the above events, the party no.1 arbitrarily decided to initiate departmental enquiry against him and charge sheet dated 02.09.1994 was issued against him by the sub-post master, Pandharkawada and a regular departmental enquiry was ordered by appointing one Shri R.M. Dhakate as the enquiry officer and the enquiry officer conducted the departmental enquiry and gave his findings dated 16.03.1996, declaring the charge against him to be proved and consequent upon the receipt of the findings given by the enquiry officer, his services came to be dismissed vide order dated 30.03.1996 and he preferred an appeal against the order of punishment, but his appeal came to be dismissed.

The further case of the workman is that after his acquittal in the criminal case filed against him, he requested the party no.1 for reinstatement in service vide his representations dated 01.12.2008 and 11.12.2008, but party no.1 paid a deaf ear to his representation, even though party no.1 reinstated Shri Narayan Bokade in service after his acquittal and there was total discrimination on the face of the action and on this ground alone, he is entitled to be reinstated in services.

It is also pleaded by the workman that the departmental enquiry conducted by the enquiry officer was not in accordance with the principles of natural justice and every reasonable opportunity of defence was not given to him and the enquiry conducted by the enquiry officer was merely a formality and the findings and order impugned were passed in most mechanical manner and personal hearing was not given by the disciplinary authority as well as the appellate authority and the entire departmental enquiry therefore was invalid and unfair and differential treatment was given by the party no.1 to him, while awarding punishment and though he himself and Shri Namdeo Bokade were involved in the same matter Shri Bokade came to reinstated in the services of the post office w.e.f. 04.03.1994, but he was denied reinstatement and the said action is unfair and illegal and the findings of the enquiry officer are perverse and there was total non-application of mind while awarding the punishment and principles of natural justice were followed by the party no.1 only in its breach and the findings are based on no evidence and the conclusions drawn by the enquiry officer are as such, which no reasonable person would draw and the action of party no.1 is illegal and unjustified and he is entitled for reinstatement in service with full back wages and consequential benefits.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was working as E.D. Packer at Pandherkawada sub-post office w.e.f. 31.07.1979 and on 30.11.1993, there was a loss of a mail bag containing remittance of Rs. 15000 and as the workman did not carry out his duty with honesty, sincerely, diligently and with alertness, it suffered a loss of Rs. 15000 and as such, a complaint was lodged at the police station, NGC, Pandharkawada on 17.12.1993, under section 409/34 IPC and a charge sheet was also filed by the police in the court of JMFC, Pandharkawada and unfortunately the charges could not be proved as the "Muddemal" seized by the police from its office was lost from the custody of the police and the workman was acquitted by the court on technical ground.

Party no.1 has further pleaded that departmental charge sheet was issued to the workman under Rule-8 of E.D. (Conduct & Service) Rules, 1964 ("the Rules" in short) and the workman participated in the enquiry proceedings on 24.01.1995, 15.02.1995, 14.11.1995, 23.01.1996, 06.02.1996 and 20.02.1996 and after conducting the enquiry, the enquiry officer assessed the documentary evidence and other evidence produced before him and submitted his report to the disciplinary authority holding the workman guilty of the charges and the workman was not dismissed from services as alleged, but he was infact removed from the service and punishment was imposed against the workman, after completion of the departmental enquiry with all fairness and following the principles of natural justice and giving reasonable opportunity to the workman and charge sheet was also submitted against Shri N.N. Bokade, who was the co-accused with the workman and punishment of recovery from his pay was imposed against him and as such, there was no discrimination against the workman and Shri Bokade was reinstated in service, before his acquittal in the criminal case, according to his role and according to the gravity of the charges, punishment was awarded to the workman and to Shri Bokade and as the workman was found guilty in the departmental enquiry, his claim for reinstatement in service for acquittal in the criminal case is not sustainable and the reinstatement in service of Shri Bokade also cannot be taken as a ground for reinstatement of the workman in service, as both of them were tried for different charges and charge sheet was also issued against them by the disciplinary authority under different rules and the acquittal of the workman was

not honorable, but the same was on technical ground and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after conducting of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 19.03.2014, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that it is clear from the report of the Enquiry Officer, Ext-W-IV that the charge No.1 was not proved against the workman and the only other charge levelled against him, i.e. the charge No.2 was that while he was working as E.D. packer at Pandharkawda Sub-Post Office on 01.12.1993, the Registration Clerk, Shri R.S.Mahalle received a letter in connection with bag from Parwa Post Office and directed the workman to give the same to the Sub-Post Master, Pandharkawda. But the workman instead of giving the said letter to the Sub-Post Master, gave the same to Shri S.N. Bokde, Mail Clerk and thereby he has not shown interest towards his work and committed violation of Rule 17 of the Rules and for the sake of argument, even if the said allegation is admitted to be true, still then the same does amount to violation of Rule 17 and the findings of the Enquiry Officer in regard to the charge No.2 is against the evidence on record and perverse and party No.1 had filed a police complaint against him and Shri Bokde, the mail clerk and police submitted charge sheet against them and the workman and Shri Bokde were acquitted by the Chief Judicial Magistrate, Yavatmal by judgment dated 03.05.2007 and differential treatment was given by the authorities to the workman while awarding the punishment and though Shri Bokde was ordered to give recovery of a part of the amount of Rs.15000 and was reinstated in service, the workman was removed from service and the punishment is shockingly disproportionate to the gravity of the charge levelled against the workman and the workman is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

6. Per contra, it was submitted by the learned advocate for the party No.1 that the departmental enquiry conducted against the workman has already been declared to be valid and in accordance with the principles of natural justice and the workman and Shri Bokde were charge sheeted under different Rules and there was no discrimination in imposing the punishment and the acquittal of the workman in the criminal case was on technical ground of non-production of the "Muddemal" by the police and his acquittal was not an honorable acquittal and as such, the workman is not entitled for his reinstatement in service for such acquittal and the findings of the Enquiry Officer are based on the evidence produced in the departmental enquiry and the same are not perverse and there is no scope to interfere with the punishment and the workman is not entitled for any relief.

7. Perused the record. Admittedly, the charge No.1 regarding the loss of the cash of Rs.15000 levelled against the workman was found to be not proved by the Enquiry Officer. No finding has been given by the Disciplinary Authority in regard to the charges.

The other charge against the workman is that he handed over a letter to Shri Bokde, the Mail Clerk, even though he was directed to hand over the same direct to the Sub-Post Master and thereby he committed the misconduct as mentioned in Rule 17 of the Rules. Rule 17 of the Rules says that, "Every employee shall at all times maintain absolute integrity and devotion to duty." The allegation as mentioned in charge No.2 against the workman does prima facie show that the workman did not maintain absolute integrity and devotion to duty. On perusal of the materials on record, it is found that the findings of the Enquiry Officer in regard to the charge No.2 are perverse and as such, the punishment imposed against the workman on such perverse finding cannot be sustained.

8. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. From the facts and circumstances of the case and as it is already held that the punishment imposed against the workman cannot be sustained, the workman is entitled to reinstatement in service with continuity and all other consequential benefits. So far the back wages is concerned, taking all the facts and circumstances of the case into consideration, I think that payment of 25% of the back wages will meet the ends of justice. Hence it is order:

ORDER

The action of the management of Superintendent of Post Offices, Department of Post, Yavatmal Division, Yavatmal (MS) in dismissing the services of Shri Vasant Shivaji Wadhai w.e.f. 30/03/1996 is illegal and unjustified. The workman is entitled for reinstatement in service with continuity and all other consequential benefits. The workman is entitled to 25% of the back wages from the date of his removal from service i.e. with effect from 30.03.1996 till the date of his actual reinstatement in service. The party No.1 is directed to carry out the directions within 30 days of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 जून, 2014

का.आ. 1903.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ मैनेजिंग डायरेक्टर, नेशनल प्रोजेक्ट कंस्ट्रक्शन कारपोरेशन लिमिटेड, फरीदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ संख्या 116/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–42012/30/2012–आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 116/2012) of the Central Government Industrial Tribunal/Labour Court, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief Managing Director, National Project Construction Corporation Ltd., Faridabad and their workman, which was received by the Central Government on 20/06/2014.

[No. L-42012/30/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI.

I. D. No. 116/2012

Shri Phool Singh,
S/o Late Shri Mool Chand,
Mohall- Fatehnagar, Sherkot,
Dhampur, Distt. Bijnor,
Uttar Pradesh.

...Workman

Versus

The Chief Managing Director,
National Project Construction Corporation Ltd.,
(NPCC), Plot No.67-68, Sector-25,
Faridabad.

...Management

AWARD

National Projects Construction Corporation Ltd. (in short the Corporation) was having surplus staff in various categories of workmen in 1987. The Corporation took into consideration its organizational requirements and decided to retrench surplusage and close down its tapering/uneconomical units. In July-August 1987, the Corporation retrenched 470 workers and units like Totladoh, Tehri, Loktak and Godavari were closed down. Shri Phool Singh, who was working as STP Operator (Compressor) at Maneribhali unit of the Corporation was retrenched on 17.07.1987. Since workers in large scale were retrenched by the Corporation, the All India NPCC Employees Federation (hereinafter referred to as the Federation) went on a strike on 19.07.1987. The strike continued till 13.07.1993. Matter was brought to the notice of the Government of India and the then Hon'ble Minister of Labour agreed to mediate between the parties. Various discussions were held and charter of demands was submitted by the Federation. Ultimately, memorandum of settlement was arrived at on 22.09.1971, which settlement was submitted before the Government and attained finality. Pursuant to modalities detailed in the settlement, retrenched employees were reinstated in service of the Corporation.

2. Shri Phool Singh was reinstated in service by the Corporation on 25.06.1993. When voluntary retirement scheme was launched by the Corporation, Shri Phool Singh opted for that scheme. He was relieved from service on 24.01.1996. Shri Phool Singh applied for monthly pension under Employee Pension Scheme 1995 (in short the pension scheme), which pension was not granted in his favour by the Corporation. In the year 2012, Shri Phool Singh raised a dispute before the Conciliation Officer, which dispute was contested by the Corporation. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No.L-42012/30/2012-IR(DU) New Delhi dated 21.09.2012 with following terms:

> "Whether action of the management of NPCC in depriving pensionery benefits to Shri Phool Singh, Ex. Compressor Operator and notional fixation of basic in the pay scale in which he was at the time of retrenchment/termination of service is justified? If not to what relief workman is entitled for?"

3. Claim statement was filed by the claimant, namely, Shri Phool Singh, pleading that he was appointed as Compressor Operator on 12.12.1981 and served at various units of the Corporation. He was given pay scale of Rs.200-10-300 and paid salary in that scale of pay. He was given regular increments till 19.07.1987. The Corporation started harassing its employees and deprived them of various benefits. Salary was not paid regularly to them. The Federation was approached by the employees for redressal of their grievances. In the garb of financial crunch/closure of units, several workmen were terminated/retrenched in violation and contravention of law. His services were illegally retrenched on 19.07.1987.

4. Strike call was given by the Federation on 19.07.1987 which strike continued till 22.03.1991, when a settlement was arrived at between the Federation and the Corporation. Settlement, so arrived at, was submitted to the Government and it attained finality. As per terms of the settlement, it was stipulated that all the workmen, including those working at Totladoh unit, mentioned in category 'C', were

being reinstated by virtue of the settlement and their basic pay would be suitably fixed in pay scales in which they were drawing pay at the time of retrenchment/termination. However it was agreed therein that they would not get any benefits for the intervening period, such as wages, provident fund, gratuity, leave, bonus etc.

5. The claimant was working in skilled category. Since the unit, where he was working at the time of illegal retrenchment, was not closed, hence his services were treated as retrenched, as per the settlement arrived at between the parties. Accordingly, the unit officer concerned was directed to offer him designation/pay scale, which he was drawing at the time of his illegal retrenchment. He was reinstated on 22.03.1993 vide order No. settlement/WC/91/0995 dated 25.06.1993 as STP Operator III in the pay scale Rs.175-8-255 on provisional pay of Rs.255 per month and was posted at Bansagar Dam. During his service period, he was covered under provisions of Employees Provident Funds and Misc. Provisions Act, 1952. He was entitled to monthly pension under the pension scheme. He opted for the voluntary retirement scheme on 08.01.1996, which request was allowed by the Corporation on 24.01.1996.

6. After fixation of his pay on 28.10.1997, he was neither paid any arrears nor provident fund amount, pleads the claimant. The Corporation defaulted in payment of contribution, as a result of which his application for pension was not processed by the Provident Fund office. The period of strike was not taken as notional service rendered by him. An application was moved by him for payment of monthly pension benefits. The application has neither been disposed off nor withdrawal benefit/scheme certificate was issued. Despite reminders, the same still pends disposal. Legal notice was served on the Corporation for payment of contribution for the period 19.07.1987 to 14.07.1993 alongwith interest to the Provident Fund Trust so that benefits under the pension scheme may be accorded to him. It has been pleaded that an award may be passed declaring him entitled to pension under the pension scheme.

7. Claim was demurred by the Corporation pleading that the claim is barred by time. The Corporation also pleads that the claimant is guilty of suppression of material facts, since he concealed that an amount of Rs.23,359.50 has been paid towards his provident fund benefits. He is not entitled to any pensionery benefits under the pension scheme, since he had not rendered eligible service for the same.

8. The Corporation pleads that the claimant was initially working as an STP Operator III(Compressor) from 12.12.1981 at its Maneribhali unit on nominal muster roll. He was converted to work charged establishment with effect form 01.01.1983 and worked as such upto 17.07.1987 at the said unit. He had not worked at any other unit of the Corporation. He has been paid all his dues at the time of his retrenchment. The Corporation had taken all requisite steps for welfare of the workmen and all benefits accruing to them had been duly paid. This fact is also evident from the settlement arrived at between the Corporation and Federation, whereby large number of employees were reinstated at the same salary on which they were working at the time of their termination/retrenchment. The Corporation did not resort to retrenchment/termination of services of its employees in mass. Due to financial problems faced by the Corporation and on completion of works of various projects/units, the workmen became surplus. Hence legal procedure of retrenchment was effected in order to maintain financial position as the Corporation was overburdened due to surplus workmen and non-availability of work. In spite of financial constraints, the Corporation arrived at an agreement dated 22.03.1991 with the Federation to reinstate the retrenched/terminated employees, subject to various terms and conditions. As per the agreement, the claimant was reinstated by the Corporation on 25.06.1993 and placed in the same pay scale on which he was working at the time of termination of his services.

9. There is an NPCC CPF Trust operated and maintained by the Corporation, in accordance with provisions of the Employees Provident Funds and Misc. Provisions Act, 1952. All employees, including the claimant, are covered by the Employees Pension Scheme 1995. Though he was entitled for CPF Fund, he was not entitled for monthly pension scheme, since he had rendered only 8 years, 1 month and 15 days service. For eligibility to pension under the pension scheme, he should have rendered at least 10 years service with the Corporation.

10. As per pension scheme, Form 10(C) is required to be submitted in order to apply for pension or for availing withdrawals. As per column No.8, a person may either take the scheme certificate or may withdraw the benefits. The claimant opted to withdraw the benefits instead of taking the scheme certificate. As per the pension scheme, for reckoning eligible service the aggregate of past and actual service shall be treated as eligible service and if there is any period in the past service for which no contributions are received towards the pension scheme, then that period will be counted only when such contributions are received in Employees Pension Fund. The services of the claimant were terminated on 17.07.1987 and reinstated on 25.06.1993. For the period of strike the claimant was not entitled to any benefits, such as wages, provident fund, gratuity, leave, bonus etc. No contribution for the period of strike was received from the claimant towards pension scheme. The Corporation pleads that the claim may be dismissed, being devoid of merits.

11. Since facts were not in dispute, there was no occasion to call the parties to lead evidence in the matter.

12. Arguments were heard at the bar. Shri Om Prakash Sharma, authorized representative, advanced arguments

on behalf of the claimant. Shri Santosh Kumar, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows:-

13. At the outset, Shri Santosh Kumar argued that the claimant opted for VRS on 08.01.1996. His request was considered favourably and he was relieved from service on 24.01.1996, after releasing retiral benefits in his favour. He slept over the matter for a period of 15 years and thereafter suddenly raised a dispute before the Conciliation Officer in the year 2012. According to Shri Santosh Kumar, claim put forward by Shri Phool Singh had become stale and he is not entitled to any relief. Shri Sharma submits that the Industrial Disputes Act, 1947 (in short the Act) nowhere provides limitation for raising a dispute for adjudication. According to him, contention put forward by the Corporation is uncalled for. Claimant is very much entitled to seek relief of pension, argued Shri Sharma.

14. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay.

15. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court ruled that though there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company [1970 (2) LLJ 256] the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. [1975 (2) LLJ 326]. In Gurmail Singh [2000 (1) LLJ 1080] Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date he raised the dispute till the date of his reinstatement. In Prahalad Singh [2000 (2) LLJ 1653], the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In Nedungadi Bank Ltd. [2002 (2) SCC 4] a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner. Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in Haryana State Co-operative Land Development Bank [2005 (5) S.C.C. 91]. From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

16. Claimant raised the dispute seeking of relief of pension in the year 2012. He sought VRS and was relieved from service by the Corporation on 24.1.1996. Thus, it is emerging over the record that the claimant had raised the dispute after a gap of about 15 years. No explanation is offered for this inordinate delay. One fine morning, the claimant made up his mind and raised the dispute for adjudication. It seems that the dispute has been raised by the claimant as a luxury litigation. No reasons are there which may show as to how the claimant came out of slumbers after such a long delay. All these facts make me to comment that the dispute was stale and there was no industrial dispute in existence or could be even said to have been apprehended in the year 2012, when the appropriate Government applied its mind to the facts of the present controversy.

17. Though the Corporation does not plead that an individual dispute has been raised, yet the issue is taken up for consideration since it is incidental to the issues, referred for adjudication. In case of an individual dispute this Tribunal can not exercise its jurisdiction for articulation. Hence it is expedient to adjudicate as to whether it is an individual or an industrial dispute. For an answer definition of term "industrial dispute", defined by the Act is to be construed. For sake of convenience definition of the term "industrial dispute" is extracted thus :

"2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

18. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with –(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

19. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to

include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute' or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the Corporation does not dispute that the claimant is workman within the meaning of clause(s) of section 2 of the Act.

20. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

"We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

21. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660] the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non-employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

22. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Drona Kuchi Tea

Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

23. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an" industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran [1970 (1) LLJ 558].

24. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

25. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. [1970 (II) LLJ 256].

26. As record tells, a dispute relating to pensionery benefits was raised by Shri Phool Singh, which dispute does not fall within the ambit of section 2 A of the Act. The dispute is apparently covered within the ambit of term "industrial dispute" defined by section 2(k) of the Act. For raising it, the claimant was under an obligation to get it espoused by a union or by considerable number of workmen, working in the establishment of the Corporation. The order, on the strength of which the dispute was sent to this Tribunal for adjudication, makes it apparent that the dispute was raised by the claimant in individual capacity. It is apparent that neither the dispute was espoused by a union nor by considerable number of workmen working in the establishment of the Corporation. As such, the dispute has not acquired status of an industrial dispute. Since it remained an individual dispute, the appropriate Government was not competent to refer it for adjudication to this Tribunal.

27. Assuming for the sake of arguments that the claim put forth by Shri Phool Singh is virtuous, even on merits too, he is not entitled to any relief. Reasons for this opinion are that Shri Phool Singh joined services of the Corporation as STP Operator III(Compressor) on nominal muster roll with effect from 12.12.1981. He was converted to work charged establishment on 01.01.1983 and worked continuously in said capacity upto 17.07.1987 at Maneribhali unit of the Corporation. His services were retrenched by the Corporation on 17.07.1987 on payment of following dues:

1.	One month notice pay	Rs.1,192.00
2.	Wages from 01.07.1987 to 17.07.1987	Rs. 607.00
3.	Encashment of unavailed leave	Rs.1,032.00
4.	Bonus from 01.04.1986 to 17.07.1987	Rs.1,330.00
5.	Gratuity upto 17.07.1987	Rs.3,697.00
6.	Compensation 15 days per completed Year of service	Rs.3,204.00

28. The Federation went on strike, since a handful of workmen were retrenched by the Corporation. The strike continued till 13.07.1993. Mater was brought to the notice of Government of India and the then Hon'ble Minister for Labour intervened. Various discussions on issue of charter of demands were held between the Federation and the Corporation. Ultimately, memorandum of understanding was arrived at on 22.03.1991. Relevant terms of settlement, arrived at between the parties are reproduced thus:

A. All workmen at Annexure 'A' who had been rendered out of employment due to retrenchment may be reinstated in service in six phases by September 1991.

B. All workmen at Annexure 'B' who had been rendered out of employment due to termination on account of closure of the union of Godavari, Tehri and Loktak may be reinstated in service in six phases by September 1991.

C. All those workmen of Totladoh unit who had notionally been reinstated with effect from 22nd November, 1989 as per Labour Court (Annexure C) Nagpur, order will now be treated as reinstated with effect from the date of their termination.

D. All workmen as mentioned in Annexure 'D' will be reinstated as mentioned in Annexure 'D' in the same manner as mentioned in Clause'A' above.

E. All those workmen who were re-employed on the intervention of the Honble Minister of Water Resources in the month of June 1990 shall be deemed to have been reinstated like others mentioned at Annexure 'A' above.

F. The workmen as mentioned in Annexure 'E' whose services had been terminated on account of disciplinary grounds will be required to represent their cases before the concerned unit officer with a copy to the General Manager(P&) at Corporate Office stating therein the reasons on the basis of which they request for reinstatement. The cases of such workmen will decided within two months from the date of representation on merit of each case and the decision of the management will be communicated to individual concerned. In case he is not satisfied with the decision, he will have right to appeal to higher authorities within three months.

G. The workmen being reinstated in the category of watchmen/ chowkidars/ Attendants/ Helpers/Khalasis/ Riger etc. in the unskilled/semi-skilled category shall join in Security Discipline and will undergo training for performance of their duties as Security Guards/Watchman. In case in future vacancy arises in semi –skilled categories such as Khalasis, Attendants etc., the workmen absorbed in Security Discipline will be given preference for their original cadre as per seniority. Management will also ascertain vacancy in these categories.

H. Those workmen who are being reinstated and who possess valid driving licence and experience may be deployed as HEM/HM/LV Drivers after taking their trade test and interviews etc.

I. Those workmen being reinstated in the category of supervisors who have qualifications of Matriculation/ Intermediate/Graduation may be offered a chance of selection against the vacancies as Junior Clerk-Typist/ Junior Clerk(Accounts)/Store Keepers/Junior Stenographers etc. These workmen will be claim promotion above the cadre of Senior Clerks(Accounts Clerk/ Storekeeper/Compounder unless they acquire Graduation Degree/Professional/requisite qualifications in their discipline.

J. All those workman including Totladoh mentioned at 'C' above are being reinstated by virtue of the settlement may be allowed basic pay suitably fixed in pay scales in which they were working at the time of retrenchment/ termination. They shall not get any benefits for the intervening period viz. wages, PF, Gratuity, leave, bonus etc.

K. Only II class train/business fare shall be admissible to any of the reinstated workmen for joining the place of duty.

L. Posting orders in respect of reinstated workmen will be communicated to individual workmen on their permanent postal address available in the records of the Corporation directing them to join within a period of one month form the date of issue of the letter, failing which order of reinstatement will be treated as cancelled and claim for reinstatement will be forfeited.

M. It is also agreed that those 55 workmen of Totladoh unit who had accepted retrenchment compensation in full tendered to them at the time of termination of their services on account of closure of Totladoh unit but were reinstated as per Labour Court, Nagpur order, shall refund the amount of such compensation received by them within one month time, failing which their services shall be retrenched and all legal dues shall be paid as per provisions of the Industrial Disputes Act.

29. Shri Phool Singh was reinstated in service on 25.06.1993. He served the Corporation till 24.01.1996, when he was relieved on seeking voluntary retirement, under a scheme formulated by the Corporation. Question for consideration before this Tribunal is as to whether period of interregnum can be treated as service rendered by Shri Phool Singh to the Corporation. For an answer to this proposition, terms of settlement provide a guide. As

detailed above, all the employees, reinstituted by virtue of the settlement, were allowed basic pay, suitably fixed in pay scales in which they were working at the time of retrenchment/termination. However, they were not to get any benefit for the intervening period, such as wages, provident fund, gratuity, leave, bonus, etc. Therefore, it is evident that the claimant was not to get any benefit for the intervening period for which he was not in the active service of the Corporation.

30. Shri Sharma argued that the said period shall be reckoned for the purpose of pension to be fixed under the pension scheme. Shri Kumar claims that submissions of Shri Sharma are in contravention of the terms of the pension scheme. For appreciation of rival submissions, provisions of the pension scheme are to be taken note of. When scanned, it came to light that the pension scheme details as to how eligible service of an employee is to be determined. For the sake of convenience, relevant portion of the pension scheme is extracted thus:

"The eligible service shall be determined as follows:

(a)In the case of 'new entrant', the 'actual service' shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored.

Explanation: In the case of employees employed seasonally in any establishment the period of 'actual service' in any year, notwithstanding that such service is less than a year shall be treated as full year.

(b) In the case of the 'existing member', the aggregate of actual service and the 'past service' shall be treated as eligible service. Provided that if there is any period in the 'past service' for which the contributions towards the Family Pension Scheme, 1971 has not been received, the said period shall count as eligible service only if the contributions thereof have been received in the Employees Pension fund.

Explanation : For the purpose of this sub-paragraph, the total past service for less than six months shall be ignored and the total past service for six months and above shall be rounded to a year".

31. As projected above, to count aggregate of actual service and past service, eligible service would be reckoned only if contributions thereof has been received in the employees pension fund. Shri Sharma could not dispel the proposition that claimant opted not to deposit his contribution in the pension fund for the intervening period. When the claimant had not deposited his contribution for the intervening period, the said period would not be reckoned as eligible service for pension under the pension scheme.

32. When intervening period is not to be reckoned, claimant had rendered service of 8 years, 1 month and 15 days only. Whether that service would entitle the claimant for pension under the pension scheme. Answer lies in negative. The pension scheme contemplates eligible service of 10 years or more for getting superannuation pension or early pension by an employee. For sake of convenience, relevant portion of the scheme in that regard is extracted thus:

"Monthly Member's Pension

(1) A member shall be entitled to :

a. Superannuation pension if he has rendered eligible service of 10 years or more and retires on attaining the age of 58 years.

b. Early pension, if he has rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years.

(2) In the case of a new entrant the amount of monthly superannuation pension or early pension, as the case may be, shall be computed in accordance with the following factors, namely:

$$\text{Monthly member's pension} = \frac{\text{Pensionable salary} \times \text{Pensionable service}}{70}$$"

33. Since the claimant had not rendered eligible service for superannuation pension or early pension, he is not entitled to project a claim against the Corporation for grant of pension in his favour. His claim on that ground is unfounded. The Corporation is found to be justified in depriving pensionery benefits to the claimant.

34. Pay of the claimant was fixed in the scale of Rs.175-8-255 on 17.07.1987, the date when he was retrenched from service by the Corporation. On his reinstatement, pursuant to memorandum of settlement referred above, his pay was fixed in the said scale of pay. His basic pay was fixed at Rs.255 per month. Claimant could not project any irregularity or ambiguity in his pay fixation order. Resultantly, it is crystal clear that notional fixation of pay of the claimant at Rs.255.00 per month in pay scale Rs.175-8-255 on 15.06.1993 was in consonance with the terms of settlement, referred above. The Corporation was justified in fixing his pat at Rs. 255 in the above scale. The claimant is not entitled to any relief on this count too.

35. In view of the foregoing reasons, the claimant is not entitled to any relief. His claim statement deserves dismissal. Discarding his claim statement, an award is passed in favour of the Corporation and against the claimant. It be sent to the appropriate Government for publication.

Dated : 05.06.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 26 जून, 2014

का.आ. 1904.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, अलग्गप्पा टेक्सटाइल्स, अलगप्पा नगर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय एर्णाकुलम के पंचाट (संदर्भ संख्या 7/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–42011/128/2013–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 7/2014) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Alagappa Textiles, Alagappa Nagar and their workman, which was received by the Central Government on 20/06/2014.

[No. L-42011/128/2013-IR(DU)]

P. K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri. D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Monday the 26th day of May, 2014/5th Jyaishtha, 1936)

ID 7/2014

Union : The General Secretary
Trichur District Textile Mazdoor Sangh
PO – Alagappa Nagar
ALAPUZHA (KERALA)

Management : The General Manager Alagappa Textiles
Alagappa Nagar ALAPUZHA
(KERALA)

By Adv. Shri P Ramakrishnan

This case coming up for final hearing on 23.05.2013 and this Tribunal-cum-Labour Court on 26.05.2013 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), the Government of India, Ministry of Labour has referred the industrial dispute to this tribunal for adjudication as per Order No-L-42011/128/2013-IR(DU) dated 10.02.2014.

2. The dispute is:

"Whether the action of the management of Alagappa Textile Mills in promoting Shri Sashidharan to the post of Jobber/Maistry by overlooking the cadre seniority of Shri Lawrence is correct? If not to what relief he entitled?"

3. After the receipt of the reference it was numbered as ID 7/2014 and notice was issued to the union and the management. After receipt of notice union did not enter appearance and file any claim statement in spite of several adjournments and hence the union was set ex-parte.

4. Management filed an affidavit by making averments justifying the action of promoting Shri Sashidharan to the post of Jobber. It is averred that Shri Sashidharan is senior to Shri Lawrence as per the seniority list published on 01.04.2012 and he is senior on considering the date of joining as well. Promotion is not a vested right and it will be at the discretion of the company based on seniority and suitability. Shri Sasidharan was promoted to the post of Jobber on finding that he is the most suitable person for holding the post.

5. As the union did not participate in the proceedings and remains ex-parte it can only be held that the action of the management in promoting Shri Sasidharan to the post of Jobber is correct in view of the averments in the affidavit filed by the management.

6. In the result an award is passed holding that the action of the management of Alagappa Textile Mills in promoting Shri Sasidharan to the post of Jobber/Maistry is correct. Hence the workman Shri Lawrence is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 26th day of May, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - **NIL**

नई दिल्ली, 26 जून, 2014

का.आ. 1905.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ पोस्ट मास्टर जनरल सर्कल और अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ संख्या CGITA 561/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–40012/247/2002–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGITA 561/2004) of the Central Government Industrial Tribunal/ Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief Post Master General, Manager, Gujarat circle and Others and their workman, which was received by the Central Government on 24/06/2014.

[No. L-40012/247/2002-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

BINAY KUMAR SINHA, Presiding Officer,
CGIT cum Labour Court,
Ahmedabad, Dated 17th April, 2014

Reference (CGITA) No. 561/2004

Reference (I.T.C) No.35 of 2003 (old)

Reference Adjudication order No. L-40012/247/ 2002-IR(DU),

1. The Chief Post Master General,
Gujarat Circle, Khanpur,
Ahmedabad

2. The Sub Post Master,
Sub Post Office,
Petlad-388450 ... (1st party)

And

Their workman
Sh. M.S. Pathan,
Patanwada,
Near Masjid,
Petlad-388450 ...(2nd party)

For the First Party : Shri P.M. Rami, Asst. Govt. Pleader

For the Second Party : Shri Bhargav M. Joshi, Advocate
Shri A.P. Rawal, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi vide its order No. L-40012/247/2002-IR(DU) dated 30.06.2003, reconsidering the dispute existing between the employer in relation to the management of Chief Post Master General, Ahmedabad and their workman in view of direction of the of the Hon'ble High Court of Gujarat in W.P. No. 4445 of 2005, referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad in respect of the matters specified in the Schedule:

SCHEDULE

"Whether the action of the management of Chief Post Master General, Ahmedabad in terminating services of Sh. M.S. Pathan is legal and justified? If not, to what relief the workman is entitled for?"

2. The case of the 2nd party (workman) as per statement of claim (Ext. 4) is that he was working as peon in the sub post office, Petlad as a casual labourer. Initially he was given work for a short duration. Then since July, 1985 he has put in three years of continuous service before terminated. After termination he filed O.A. No. 564/89 with prayer to direct the postal Dept. to regularise his services on the basis that he had completed 360 days of service in the 1st party office. The O.A. was disposed of vide order dated 21.11.1997 directing the postal dept. to consider the case of regularisation but not decided the question of termination and/or legality and propriety of the order of termination. Several representation were made to the 1st party department to consider his case for regularisation and the 1st party department informed vide its letter dated 19.07.2002 that you do not fulfil the condition of scheme for regularisation. Thereafter dispute was raised before the conciliation officer ALC (Central) Ahmedabad who refused to refer the dispute vide order dated 07.01.2003. Then he filed in S.C.A No. 4445/2003 before the Hon'ble High Court and the Hon'ble Court quashed the order dated 07.01.2003 and directed to refer the dispute for adjudication and the dispute was then referred as per schedule for adjudication. The case of the 2nd party is that the 1st party has violated the provision of section 25F, G and H of the I.D. Act by illegally terminating his services without paying retrenchment compensation, not following seniority list and engaging new casual worker for same work which he was doing. On these grounds, prayer is to declare the action of the 1st party in terminating his services illegal, improper and unjust and for his reinstatement with consequential benefits and back wages and also to any other relief to which he is found entitled.

3. As against this the contention of the 1st party inter alia as per written statement (ext.15) is that the reference is not maintainable, the 2nd party has no cause of action , the 2nd party has not come up with clean hands and has concealed the true facts in the statement of claim, the reference is bad for delay and latches. The averment of para 1 to 5 of the S/c are not true and so denied. The 2nd party was outsider casual worker working in Group 'D' as substitute during leave vacancy of regular Group 'D'staff of sub post office, Petlad and that he was not working as regular staff, he never completed 240 days works in the calendar year. It has been denied that the 2nd party was illegally terminated and principle of natural justice was

violated. The 1st party has not violated the provision of section 25 F, G and G of the I.D. Act. On these scores, prayer is to dismiss the reference since the 2nd party is not entitled to get any relief as prayed for.

4. In view of the rival contention of the parties, the following issues are taken for determination:

ISSUES

(i) Is the reference maintainable?

(ii) Has the 2nd party Shri. M.S. Pathan any valid cause of action to raise industrial dispute against the 1st party?

(iii) Whether the reference is barred by delay and latches?

(iv) Whether the 2nd party Shri M.S. Pathan is workman u/s. 2(S) of the I.D. Act? Where relation of master and servant exist between the 1st party and the 2nd party?

(v) Whether the 2nd party Shri. M.S .Pathan has completed 240 days' work in the Calendar year preceding his termination?

(vi) Whether the action of the management of chief post master General, Ahmedabad in terminating the services of Sh. M.S. Pathan is legal and justified?

(vii) Whether the 2nd party (workman) is entitled to the relief of reinstatement with back wages? What relief he is entitled to in this case?

FINDINGS

5. ISSUE NO. (iv) and (v):- The 2nd party in his evidence (Ext.11) vide para-9 of cross-examination states that he was working as peon on the vacant post of Peon at Petlad sub-post office on 11.03.1985 and he was removed from work on 30.06.1988 and that he was getting Rs. 950/- per month salary. Vide para 11 he deposed that during his period of works from 1985 to 1986 the Postal Department did not pass order for his regularisation and did not also give right for permanency on the post. Though he claims that he was not working temporarily, rather working on permanent post. The 1st party witness Shri Salimmbhai Ibrahim, Asst. Postal Officer in his oral evidence (Ext.18) says that Shri M.S. Pathan had been appointed purely on temporary basis and he worked from 1985 to 1988 for three years but did not work for 240 days in any year. He was out sider workman when regular staff went on leave he was working in his place. During cross-examination vide para-5 he admit that after termination of M.S. Pathan the regular staff still go on leave but M.S. Pathan was not called back to work as substitute rather the sub postmaster Petlad can say in details regarding the reason but he cannot say and that if Sub-Post Master want then he can easily keep M.S. Pathan on work. Besides, the oral evidence of both side as discussed Ext. 9/1 the original letter of sub-post master (LSG) Petlad addressed to senior superintendent of post Office Kheda Division, Nadiad on the subject of CAT judgement in O.A. No. 441/90 reveals that Shri M.S. Pathan was working form 11.03.1985 to 30.06.1988 in Gr. D/Peon cadre reason for his engagement as substitute on leave period of Shri H.J. Vyas, Postman, Petlad and Shri M.S. Pathan has worked 1 year 8 month 16 days and that the reason for continuance as substitute for long period as H. J. Vyas Pman Petlad was on long leave and so Shri M.S. Pathan continued on work. It has also been in corporated that Shri M.S. Pathan has worked vice Shri H.J .Vyas who is class IV Gr. D Petlad and that Shri H. J. Vyas class IV Petlad was promoted as Postman from Gr. D Petlad during vacant period. This clearly go to prove that the Gr. D post was vacant on which Shri M.S. Pathan was working since promotion of H.J. Vyas and Shri M.S. Pathan has continued to work for long period. Ext. 9/2 and 9/3 are carbon copy of letter dated 19.08.19999 and 30.07.1998 of post master General Vadodara Region, Vadodara to Shri M.S. Pathan intimating that the scheme is not yet finalised and that case of M.S. Pathan is under consideration. Ext. 7/1 is zerox copy of letter dated 19.07.1999 of M.S. Pathan to sub-post Master Petlad. Ext. 7/1 is zerox copy of letter of post master general, Vadodara (Ext.9/2 is original). Ext.7/3 is copy is pleader's notice of M.M. Pathan, Advocate dated 10.08.1998 to Asst. Director, Postal Service, Vadodara. Ext.7/4 is zerox copy of original letter (Ext.9/3) Ext. 9/4 is zerox copy of order dated 21.11.1997 of CAT in O.A. No. 504/1989. Ext. 9/6 is copy of order of High Court of Gujarat S.C.A. No. 4445 of 2003 dated 30.04.2003 directing the R.L.C (Central) to reconsider the matter for referring dispute for adjudication.

6. Thus on consideration of the oral and documentary evidence, I am of the firm opinion and therefore find and hold that the 2nd party Shri M.S. Pathan is a 'workman 'of the 1st party as defined under section 2(S) of the I.D. Act and there exist relation of master and servant . I further find and hold that the 2nd party Shri M.S. Pathan has completed 240 days work in calendar year preceding his termination w.e.f. 30.06.1988. So these issues are answered in affirmative in favour of the 2nd party.

7. ISSUE NO. (vi):- As per findings to issue no. (iv) and (v) in the foregoings , I further find that the 2nd party Shri M.S. Pathan has worked for more than one year in continuity but even then the management of the 1st party failed to observe the mandatory provision of section 25F of the I.D. Act in not giving him one month notice, or notice pay and retrenchment compensation and discontinued/terminated him on 30.06.1988 without cogent reason. So the action of the management of chief post master General, Ahmedabad in terminating the services of Shri M.S. Pathan is illegal and unjustified. This issue is

answered in negative against the management of the 1st party.

8. ISSUE NO. (iii) :- Since after termination of Shri M.S. Pathan, he was agitating the matter against the management before the Hon'ble CAT, Ahmedabad and then before the Hon'ble High Court of Gujarat. So there is no delay and latches on part of the 2nd party. This issue is answered in negative.

9. ISSUE NO. (i) and (ii) :- In view of the findings to issue No. (iii), (iv), (v) and (vi) in the foregoing paragraphs, I further find and hold that the reference is maintainable and the 2nd party (workman) has valid cause of action to raise dispute against the 1st party, employer.

10. ISSUE NO. (vii):- In the past due to violation of the mandatory provisions of section 25F of the I.D. Act by the employer, usually the casual workman who completed 240 days work in calendar years were granted relief for reinstatement to work with back wages to any percentage according to the merit of each case. But now there have been changes in the view of the Hon'ble Apex Court that since casual worker even completing 240 days work in some year do not hold a post as that of regular employee. So, as a matter of right casual worker cannot claim reinstatement, rather a reasonable compensation should be awarded to them. In the case of senior superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal & others (2010 III CLR 17) it has been held by their Lordship of the Hon'ble Supreme Court (D.B.) –"grant of reasonable compensation to the workman instead of reinstatement and back wage in the case of termination of service is found illegal will sub serve the ends of justice" so in the instant case even if the 2nd party workman Shri M.S. Pathan was working form 07.03.1985 to 30.06.988 and completed 240 days work in a calendar year as substitute casual labourer, he as a matter of right cannot claim for reinstatement with back wages, because he did not hold a post as that of regular employee. However, he is entitled for reasonable compensation from his employer since his termination has been held to be illegal and unjustified.

11. So regard being had to the facts and circumstances that the 2nd party Shri M.S. Pathan worked as substitute Gr. D for long in leave vacancy at Petlad Sub Post office for one year eight month 16 days as per Ext.9/1. He is awarded lump sum compensation of Rs. Fifty Thousand Only (Rs.50,000) form the 1st party which will sub serve the ends of justice in this case. So this issue is decided accordingly. The reference is allowed in part. No order of any cost.

The 1st party is directed to pay the compensation in one lump sum to the 2nd party workman Shri M.S. Pathan within one month of receipt of copy of award, failing which the amount of compensation will carry interest @ 9% per annum.

Let two copies of award be sent to the appropriate Government for publication on u/s 17(1) of the I.D. Act, 1947.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 26 जून, 2014

का.आ. 1906.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट अर्चायोलॉजिस्ट अर्चायोलॉजिकल सर्वे ऑफ़ इंडिया, आगरा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय कानपुर के पंचाट (संदर्भ संख्या 68 of 2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–42012/23/2006–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 68 of 2006) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Suptd. Archaeologist, Archaeological Survey of India, Agra and their workman, which was received by the Central Government on 20/06/2014.

[No. L-42012/23/2006-IR(DU)]

P. K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 68 of 2006

Between-

Sri Raj WardhanTiwari,
Son of Sri Ram Ji Lal Tiwari,
Mohalla Hundawala,
Bouhram Gali,
District Faridabad

And

The Suptd. Archaeologist,
Archaeological Survey of India,
22 Mall Road,
Agra.

AWARD

1. Central Government, Mol, New Delhi, vide notification No. L-42012/23/2006-IR DU dated 11.09.2006, has referred the following dispute for adjudication to this tribunal-

2. Whether the action of the management Archaeological Survey of India, Agra, in terminating the services of Sri Raj Wardhan Tiwari, casual photographer with effect from 01.10.93 is legal and justified? If not what relief the workman concerned entitled to?

3. Brief facts are-

4. It has been alleged by the claimant that he was engaged as a casual photographer with effect from 07.09.92 and worked there till 30.09.93, as such he has completed for more than 240 days in a calendar year with the opposite party at 22 Mall Road Agra. But the opposite party without any reason and without issuing any notice has terminated his services w. e. f. 01.10.93, as such the opposite party has committed the breach of the provisions of section 25F, 25G and 25 H of the Act, as junior to him by name Sri Sunil is still working with the opposite party.

5. One vacancy in photographer Gr. III has fallen vacant in June 95, for which the claimant has also sent an application in Feb. 97, but the opposite party did not call him for interview and the candidate was selected through direct recruitment. It is also alleged that the clamant is unemployed.

6. Therefore, on the basis of above it has been prayed that he be reinstated in service with full back wages and all consequential benefits.

7. The opposite party has refuted the claim of the claimant by filing written statement. They have stated that th claimant was engaged for highly intermittent casual nature of job work on daily labor charge basis. There was no further recruitment for engaging him as the job for which he was engaged was finished hence his services were came to an end by efflux of time. The clamant had worked only for a total period of 172 days between 07.09.92 to15.09.93, as such no cause of action has arisen on 01.10.93, as such he has not completed 240 days in a calendar year therefore, under these circumstances of the case question of making compliance of the provisions of Industrial Disputes Act, 1947, does not arise and the claimant's case being devoid of merit is liable to be dismissed.

8. It is stated that the case of Sri Sunil is different and cannot be compared with the present applicant. Sri Sunil who has been presently engaged has filed I.D. No. 22 of 91 which culminated in his favor including upto the Hon'ble High Court. Therefore, due to the order of the Hon'ble High Court he has been paid his wages. It is wrong to say that the post of photographer Gr.III has fallen vacant; therefore, question of fresh interview does not arise. The claim is highly belated being raised after 12 years from the date of alleged termination and no appointment order was ever issued by the management.

9. Both the parties have filed documentary evidence as well as adduced oral evidence.

10. Claimant has filed several documents vide list paper No.19/2 and these documents are vide paper No.19/3-95.

11. Opposite party has filed the original service record of the claimant, which is paper No. 37/1.

12. Claimant has adduced himself in evidence as ww.1, opposite party has adduced m.w.1 Sri Mohit Kumar who is In-charge of Photo Section. He has specifically stated on oath that the claimant was engaged as a casual labor on daily rate basis according to the need of work on 07.09.92 but during this date and the date of his dispensation from service i.e. 15.09.93, he has not continuously worked for 240 days. He has worked only for 172 days during the aforesaid period.

13. The opposite party has produced the original register of photo section wherein at page 10-11 there is a mention of the work of the claimant. Opposite party has also filed the relevant record which is paper No.37/1 which relates to the claimant. It is a record of photo section mentioning as daily rate casual worker. It clearly shows that the workman has worked only for 172 day.

14. The opposite party has also filed the photocopy of the original register which are paper No.29/1 and onwards.

15. The claimant has filed several documents which are the photocopies. From this record there is no such cogent evidence from which it can be inferred that the claimant had worked for 240 days or more. Therefore, from the paper 19/3-95, claimant cannot get any benefit. There is no such paper amongst these papers which may prove that th claimant had worked for 240 days or more and some right has accrued to him.

16. I have examined the oral evidence adduced by the workman, but there is no such cogent evidence in support of the oral statement whereas the opposite party has specifically stated on oath and filed relevant records and documents pertaining to the concerned workman.

17. As such there is no reason to discard the evidence adduced by the opposite party either oral or documentary.

18. Therefore, the claimant has failed to prove his case under the provisions of the Act, as such it is held that the workman is not entitled for any relief pursuant to the present reference order.

19. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 26 जून, 2014

का.आ. 1907.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर फ़ोर्स, एमईएस, सरसावा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–2, दिल्ली के पंचाट (संदर्भ संख्या 82/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–14012/08/2013–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 82/2013) of the Central Government Industrial Tribunal/Labour Court No.2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Air Force, MES, Sarsawa and their workman, which was received by the Central Government on 20/06/2014.

[No. L-14012/08/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO. 33, BLOCKS-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI-110 032

Present:- Shri Harbansh Kumar Saxena

ID No. 82/13

Sh. Om Kumar

Versus

Air Force, MES Sarsawa.

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-14012/08/2013-IR(DU) dated 11.07.2013 referred the following Industrial Dispute to this tribunal for adjudication :-

Whether the action of the management of Garrison Engineer , Air Force, Sarsawa and M/s. Mahadev Electricals, Saharanpur in terminating the services of Sh. Om Kumar S/o Sh. Brijpal Singh, DG Set Operator, w.e.f. 12.01.2012, in violation of provision of section 25 FGH of ID Act, 1947 is unjustified? To what relief the workman concerned is entitled to?

On 23.07.2013 reference was received in this tribunal. Which was register as I.D. No. 82/2013 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Claimant/Workman was called upon to file Claim Statement on 10.09.2013 but claimant/workman has not filed claim statement even thereafter inspite of several opportunities. Then on 18.02.2014 this tribunal directed management to file response. Management filed response in the shape of written statement on 23.11.2013. Wherein management mentioned as follows:-

Preliminary Objections:-

1. That the present reference is bad in law, without application of mind and in a stereo type manner hence liable to be dismissed.
2. That the present statement of claim is not maintainable as the provisions of ID. Act, 1947 are not applicable to the answering Respondent as it performs the sovereign function of the Government and does not carry out any activity related to production, distribution, or supply of goods or services meant for satisfying for human wants.
3. That there is no relationship of employer and employee and that of a master and servant existing or otherwise exists between the claimant and the answering Respondent.
4. That the present claim petition has no cause of action against the answering Respondent as Claimant had never been engaged as an employee of the answering Respondent.
5. That by virtue of the position of the claimant and the status of the claimant and being an employee of the contractor agency he did not answer the description of the word "Workman" as defined in the clause (s) of Sec.2 of I.D. Act, 1947. In view of this the claim of the claimant is utterly misconceived and the same deserves to be dismissed out rightly.
6. That the above said claimant may have been engaged by the Respondent No. 2 and the claimant has/had never been engaged as an employee of the answering Respondent.
7. That the above claimant has no locus standi to file this claim against the answering Respondent being there is no industrial dispute between the claimant and answering respondent.
8. That the claim petition is not maintainable as the claimant have not come with clean hands and concocted the material facts before the Hon'ble Tribunal, the claim appears to be less substantiated with facts. Hence the claim deserves dismissal being a misplaced ere-supposition.

9. That the present petition is not maintainable in view of the judgments passed by the Hon'ble Supreme Court in the case of State of Karnataka Vs. Uma Devi & Ors. [2006(4)SCC 1], Surender Prasad Tiwari Vs. U.P. Rajya Krishi Utpadan Mandi Parishad [Appeal (civil) 3981 of 2006] as the applicant has no cause of action for filing the present petition as it is settled law that a person who is engaged as casual labour/contractual worker, cannot claim any right either for regularization or for seeking any parity with the other regular employees. Para 11 and part of para 34 and 36 of the judgment [State of Karnataka Vs. Uma Devi & Ors [2006(4)SCC 1] read as under:-

"In spite of this scheme, there may be occasions when the sovereign state or its instrumentalities will have to employ to persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not indeed permanently. This right of the Union or of the State Government cannot be recognized and there is nothing in the constitution which prohibited such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resort to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Government do not have the right to engage persons in various capacities for short duration or until the work in a particular project is completed. Since this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinary not proper for courts whether acting under Article 266 of the constitution or under Article 32 of the constitution, to direct absorption in permanent employment for those who have been engaged without following a due process for selection as envisaged by the constitutional scheme.

….Thus it is clear that adherence to the rule of equality in public employment is a basic feature of our constitution and since the rule of law is the core of our constitution, a court would certainly be disabled from passing an order upholding a violation of article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this court while laying down the law, as necessary to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons. If it is a contractual appointment, the appointments come to an end at the end of the contract, if it were an engagement or appointment on daily wages of casual basis; the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be permanent on the expiry of his term appointment. It has been clarified that merely because a temporary employee or a casual wage worker is continued for a time bound term of his appointment, he would not be entitled to be observed in regular service or made permanent, merely on the strength of such continuance if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with the eyes open. It may be true that he is no in a position to bargain-not at arm's length-since he might have been searching for some employment so as to take out his livelihood and accepts whatever he gets. But on that ground alone it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to avoid a contractual appointment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and is imposed , would only mean that some people who at least get employment temporarily, contractually or casually would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences following from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment.

It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employment or the interest in that post cannot be considered to be of such a magnitude as to enable the giving of the procedure established, for making regular appointments to available posts in the services of the state. The arguments that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of the constitutionality and equality of opportunity enshrined in Article 14 of the constitution of India.

On the basis of which management prayed to dismiss the claim statement of workman and give its award accordingly.

I have heard the Ld. A/R for management. I perused the pleadings of management which are on record. Which makes it crystal clear that this tribunal has no option except to pass. No Dispute Award and reference is liable to be decided in favour of management and against workman.

Which is accordingly decided.

No Dispute Award is accordingly passed.

Dated:16/05/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 26 जून, 2014

का.आ. 1908.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर जनरल (वर्क्स) सीपीडब्ल्यूडी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, दिल्ली के पंचाट (संदर्भ संख्या 46/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 20/06/2014 को प्राप्त हुआ था।

[सं. एल–42011/142/2011–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 46/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director General (Works), CPWD and their workman, which was received by the Central Government on 20/06/2014.

[No. L-42011/142/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D. No.46/2012

The General Secretary,
CPWD Mazdoor Union,
Room No.95, Barracks No.1/10,
Jam Nagar House, Shahjahan Road,
New Delhi-110011.

...Workman

Versus

The Director General (Works),
CPWD,
Nirman Bhawan,
New Delhi-110001.

...Management

AWARD

Central Public Works Department (hereinafter referred to as the management) engages casual employees on muster roll/hand receipt basis. Shri Vinod Kumar was engaged as mason on hand receipt basis by the management on 01.07.1986. He served the management for 22 years, 6 months and 24 days, till he breathed his last on 24.01.2009. His services were not regularized by the management. During his life time, he approached the CPWD Karamchari Union(hereinafter referred to as the union) for redressal of his grievance. The union raised a dispute before the Conciliation Officer, which dispute was contested by the management. However, during pendancy of the dispute before the Conciliation Officer, Shri Vinod Kumar breathed his last. Smt. Anita Rani, his widow, was substituted in the dispute and she claimed compassionate appointment, in the service of the management. Since the management contested her claim also, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate government referred the dispute to this Tribunal for adjudication vide order No.L-42011/142/2011-IR(DU) New Delhi dated 15.02.2012 with following terms:

"1. Whether Shri Vinod Kumar, daily rated mason employed by CPWD is entitled for regularization of services with effect from 01.07.1986, the date of his initial appointment? What relief the workman is entitled?

2. Whether Smt. Anita Devi, widow of late Shri Vinod Kumar is entitled for compassionate appointment? What relief widow of the workman is entitled to?"

2. Claim statement was filed by and on behalf of Smt. Anita Devi, pleading therein that late Shri Vinod Kumar was initially engaged as mason by the management on

hand receipt basis with effect from 01.07.1986. He was deputed to work in S Division, CPWD, East Block, R.K. Puram, New Delhi. He completed more than 20 years of service. His services were not regularized by the management. Pursuant to directions given by the Apex Court in Surender Singh [1986 (52) FLR 216] the management created 8982 posts in various categories and regularized daily rated employees on those posts. Despite creation of those posts, Shri Vinod Kumar was arbitrarily singled out and not regularized in service by the management.

3. Shri Vinod Kumar breathed his last on 25.01.2009. He was survived by Smt. Anita Devi and Master Rahul and Master Hemant, his widow and sons respectively. He left the family in penury and Smt. Anita Devi is entitled for compassionate appointment. On many occasions, management has given compassionate appointment to survivors of daily rated workers. However, Smt. Anita Devi was illegally declined compassionate appointment in service. In case services of Sri Vinod Kumar would have been regularized, Smt. Anita Devi would have been given family pension. She claims regularization of services of her husband with effect from 01.07.1986 or from the date when services of his juniors were regularized, besides family pension as well as appointment on compassionate grounds in her favour.

4. The management could not dispute that Shri Vinod Kumar was engaged as mason on hand receipt basis with effect from 01.07.1986. It has been pleaded that he was given pay and allowances at minimum of the time scale for the post of mason upto the date of his death, which occurred on 25.01.2009. It has also not been disputed that he had rendered more than 20 years of service till the date of his death. The management projects that services of Shri Vinod Kumar were initially engaged after imposition of ban on recruitments, vide order dated 19.11.1985. 8982 posts were created by the department, pursuant to directions of Apex Court for regularization of eligible workers who were engaged before imposition of ban on 19.11.1985. All workers were regularized from prospective dates and not from the dates of their initial engagement. Since Shri Vinod Kumar was engaged on 01.07.1986, he was not considered for regularization against posts, so created by the management. However, the Apex Court in Uma Devi [2006 (4) SCC I] directed the Union of India, State Governments and their instrumentalities to take steps to regularize services of the employees reengaged in an irregular manner, who had rendered more than 10 years of service, as one time measure.

5. In compliance of that judgement, details of Shri Vinod Kumar were forwarded to the competent authority, but he expired before receipt of approval for regularization of his services. Hence, his case could not be considered for regularization. Owing to his death, he was not in a position to fulfill requirement of recruitment rules such as medical examination on his entry in service and verification of character and antecedents. Since he had not rendered regular service, Smt. Anita Devi is not entitled to family pension. Compassionate appointment is granted to widow or kin of a deceased Government employee, who rendered confirmed service. Since Shri Vinod Kumar had not rendered services as regular employee of the management, Smt. Anita Devi is not entitled to compassionate appointment in service of the management. Claim put forward by Smt. Anita Devi is liable to be dismissed, pleads the management.

6. On perusal of pleadings, following issues were settled:

(i) Whether claimant was to be regularized by the management from 11.12.2006 in terms of directions given by the Apex Court in State of Karnataka vs. Uma Devi?

(ii) As in terms of reference.

7. To substantiate the claim, Ms.Anita Devi testified facts. Shri Arab Singh, Executive Engineer, entered the witness box to present defence of the management. No other witness was examined by either of the parties.

8. Arguments were heard at the bar. Shri B.K. Prasad, authorized representative, advanced arguments on behalf of the claimant. Shri Sanjay Kumar Aggarwal, authorized representative, raised submissions on behalf of the management. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

Issue No.1

9. Smt. Anita Devi declares in her affidavit Ex.WW1/A, tendered as evidence, that her husband, namely, late Shri Vinod Kumar was initially engaged as mason by the management on hand receipt basis with effect from 01.07.1986. He rendered continuous service to the management till he expired on 25.01.2009. Facts testified by her were not disputed by Shri Arab Singh. He declares that Shri Vinod Kumar rendered continuous service for 22 years 6 months and 24 days. Thus, it is crystal clear that late Shri Vinod Kumar rendered continuous service of more than 22 years with the management as mason on hand receipt basis.

10. In Uma Devi (supra), the Apex Court was confronted with a proposition as to whether irregularly appointed employees are entitled for regularization in service. It was ruled therein that an employee who has been engaged dehors the rules is not entitled for continuation or regularization in service. Theory of legitimate expectation for regularization in service was also denounced by the Apex Court. However, the Court was conscious of the proposition that the employees, who were irregularly

appointed, had rendered continuous service for more than a decade to the Union of India or State Governments, as the case may be taking into account all those situations, the Court commanded the Union of India, State Governments as well as its instrumentalities to take steps for regularization of services of the employees, irregularly appointed, as one time measure. Observations made by the Apex Court in that regard are extracted thus:

> "One aspect need to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa, R.N.Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten yeas or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts, that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub-judice, need not be reopened posted on this judgement, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

11. Pursuant to directions given by the Apex Court, the Ministry of Personnel, Public Grievance and Pension, Government of India, New Delhi, issued office memorandum on 11.12.2006, which has been proved as Ex. MW1/7. It has been detailed in Ex. MW1/7 that the Apex Court has directed the Union of India, State Governments and their instrumentalities to take steps for regularization as one time measure, services of such irregularly appointed, but who were duly qualified persons in terms of statutory recruitment rules for the post and who have worked for 10 years or more in duly sanctioned posts but not under cover of orders of Courts or Tribunals. The management also issued office order bearing No.19/176/2004/EC-X dated 07.12.2012, which has been proved as Ex. MW1/W5. In the said circular, it has been emphasized that the employees who do not fulfill eligibility criteria prescribed in existing recruitment rules but were eligible for appointment against posts as per recruitment rules prevailing at the time of their engagement on muster roll/hand receipt, may be regularized in their respective categories, if they are found eligible as per recruitment rules prevailing at the time of their engagement on muster roll/hand receipt.

12. Out of above office memorandum and office order it emerged over the record that pursuant to directions given by the Apex Court, the management started process of regularization of services of the employees, irregularly appointed, who were duly qualified in terms of statutory recruitment rules and have worked for 10 years or more in duly sanctioned posts, but not under covers of orders of Courts or Tribunals.

13. Shri Vinod Kumar was initially engaged as mason on hand receipt basis on 01.07.1986. The management had not come out with a case that at the time of his engagement, Shri Vinod Kumar did not possess requisite qualifications. It is also not the case of the management that Shri Vinod Kumar was overage for recruitment as mason on 01.07.1986. Case projected by the management is that he was engaged as mason on hand receipt basis after imposition of ban on recruitment on 19.11.1985. Thus, it is clear that except for imposition of ban on recruitment of employees on muster roll, Sri Vinod Kumar was engaged in consonance with the rules. Evidently, his engagement was irregularly made by the management on 01.07.1986. It is admitted case of the parties that he rendered continuous service of more than 20 years on the date when judgement in Uma Devi(supra) was handed down by the Apex Court.

14. Whether Shri Vinod Kumar was eligible for regularization in service? Smt. Anita Devi unfolds that as per prevalent recruitment rules, her husband was not having requisite educational qualifications for his regularization in service of the management. Shri Arab Singh presents that for appointment on the post of mason, an incumbent should possess ITI certificate with atleast five years' experience in the trade. He had proved recruitment rules for the post of mason as Ex. MW1/3. When Ex. MW1/3 are scanned, it emerged over the record that post of mason is Group C post and incumbent should possess ITI certificate or equivalent in the trade with atleast five years' experience in the trade. He should also possess professional knowledge as detailed below:

(a) Should be able to use tools in common use in the trade and in skilled manner.

(b) to mark foundation and set out work with tape and rule as also to prepare foundation for pumps and other machinery

(c) Must be able to work at height over scaffolding

(d) Must be able to read more advanced drawings.

(e) Should be able to dress stones/bricks well and set them in first class work.

(f) Must be able to carry out all kinds of masonry, i.e. masonry with various types of bonds and arch work in case of brick work and cutting face stones properly breaking bond in case of stone masonry, including proper setting of bond stones wherever called for.

(g) Should be able to carry out all kinds of RCC work

(h) Should be able to make cement floors (including —— floor in panels) and be able to lay pre-cast cement tiles and all types of glazed/ceramic floor and dado in a workman like manner with close joints.

(i) Should have good working knowledge of various lime and cement mortars for joint plastering and pointing work and be able to prepare mortar for the various jobs and carry out plastering and pointing work.

(j) Should be able to use Mechanically/ Electrically/ Battery operated machines/ tools connected with above type of works.

15. Shri Aggarwal argued that late Shri Vinod Kumar was not having ITI trade certificate, hence not eligible for regularization in service. His submissions are discounted by Shri Prasad, placing reliance on office order dated 07.12.2012, proved as Ex. MW1/W5. As noted above, office order Ex. MW1/W5 makes it apparent that muster roll/hand receipt workers shall be regularized in service if they are found eligible as per recruitment rules prevailing at the time of their engagement on muster roll/hand receipt basis. Evidently, Shri Vinod Kumar was engaged in July 1986. Recruitment rules Ex. MW1/3 were not in force at the time, as conceded by Shri Aggarwal. It has not been disputed by Shri Aggarwal that in 1986, an incumbent should possess qualification, which are detailed below, for engagement as mason:

(a) Should be able to use tools in common use in the trade in skilled manner

(b) To mark foundations and set out work with tape and rule as also prepare foundations for pumps and other machinery

(c) Must be able to work at height over scaffolding

(d) Must be able to read more advanced drawings

(e) Should be able to dress stones/bricks well and set them in first class work

(f) Must be able to carry out all kinds masonry, i.e. masonry with various types of bonds and arch work in case of brick work and setting face stones properly breaking bond in case of stone masonry including proper setting of bond stones whenever called for.

(g) Should be able to carry out all kinds of RCC work

(h) Should be able to make cement floors (including mosaics in floors and panels) and be able to lay precast cement tiles and white glazed tiles in floors and dado in workman like manner and with close joints

(i) Should have good working knowledge or various lime and cement mortars for joint plastering and pointing work and be able to prepare mortar for the various jobs and carry out plastering and pointing work.

Departmental Test

(a) Make out foundations for an additional bath room to an existing house. Size of room 4' × 5' and plinth 2 ft. high and structure in single storey.

(b) Build a flat arch over a window or an arch 13 ½ × 15' deep over a culvert span 4 ft. after putting up necessary centering. The fact of the arch should show key stone projecting 2 ¾ to a side and the entire fact to be cement pointed with colour to match the structure. The mortar proportions to be supplied to by the candidate.

(c) Cut and dress a piece of flag stone to a neat surface finis and set in the floor in replacement of broken one.

(d) Lay cement tiles cream coloured for a corner in a room 4'×4'×4' and set wall dado 1'-6' in height with similar tiles. The work should be neatly finished including finishing of joints and to true level and plumb.

(e) An oral test regarding proportions and constituents of various mortars for various purposes.

(f) Fix a bracket for wash hand basin in replacement of an existing one.

(g) Set ridge tiles over a Mangalore tiled roof or on a hip for length of 10 feet

Or

Make three steps 2 -1/6' long 8' size and 9' tread and finish it up with diagonal criss cross for the tread. The steps should be true to level and plumb.

16. Qualification which an incumbent should possess for engagement to the post of Assistant Mason are also detailed below:

(a) Should be able to use tools in common use in trade such as level square plumber etc.

(b) Must be able to lay bricks in simple bond

(c) Must be able to fill in hearing in case of stone masonry

(d) Must be able to work on heights over scaffolding

(e) Must be able to punch holes in walls

(f) Must be able to do patch work on walls and in floors

(g) Must be able to prepare rough centering for RCC work

(h) Must be able to carry out plastering and pointing work

Departmental Test

(a) Build a corner wall of 113 ½' × 13 ½' or 13 ½' × 9' for a height of 4' and arm 4 ft. long outside and set one of the holdfasts for a window at a height of 3 feet above floor level. Proper care should be taken to keep walls plumb corners square and courses truely level and with English bond.

(b) Punch a hold in an existing wall at a height of 9 ½' above floor, 6' × 6' from corner The size of hole is to be 5' ×10'. The hold should be properly finished up in plaster to true square corners.

(c) Put in plaster to a wallface 4' × 6' which includes a window jamb and a corner.

17. As noted above, the recruitment rules, prevalent in 1986, nowhere contemplate that an incumbent should possess ITI trade certificate or equivalent in the trade for being engaged as mason. Shri Aggarwal could not dispute that qualification for engagement to the post of mason as prevalent in July 1986, were possessed by late Shri Vinod Kumar. Besides above qualification, Shri Vinod Kumar pursued a course of study under Construction Trade Competency programme in September 2006. He also appeared in Construction Trade Competency programme in September 2006 and was awarded competency certificate as mason by the Construction Industry Development Council. He also underwent refresher course for plumber from 31.07.2006 to 04.08.2006. His certificates in that regard were proved as Ex.WW1/M1 to Ex.WW1/M3. Therefore, it is emerging over the record that Shri Vinod Kumar possessed required qualification for appointment to the post of mason, when he was initially engaged on that post on hand receipt basis by the management. It cannot be said that engagement of Shri Vinod Kumar in July 1986 was in infraction of rules, except that he was engaged during imposition of ban on engagement of employees on muster roll. I am of the considered opinion that Shri Vinod Kumar fulfilled all parameters of regularization of his services as one time measure, pursuant to the directions given by the Apex Court.

18. Seniority list of masons, as on 13.07.2006 has been placed on record. The said list has been proved as Ex. MW1/W1 by Shri Arab Singh. In the said seniority list, name of Shri Vinod Kumar appears at serial no.12, while there were four persons junior to him, whose names were at serial Nos.13, 14, 15 and 16. Shri Arab Singh concedes that Shri Ramesh Kumar, Shri Jeet Singh, Shri Kalu Ram and Shri Hriday Kumar, juniors to Shri Vinod Kumar as detailed in seniority list Ex. MW1/W1, were regularized on 11.12.2006. It is not the case of the management that juniors, whose names have been referred above, were placed differently than Shri Vinod Kumar was placed on 11.12.2006.

19. Can management be permitted to discard seniors and regularize services of a junior? Answer lies in negative. In Bal Kishan (1990 (I) LLJ 61)the Apex Court announced that no junior shall be confirmed or promoted without considering the case of his senior. The observations made by the Apex Court are reproduced thus :

"In service, there could be only one norm for conferment or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from their being contrary to Article 16(1) of the Constitution."

20. In view of the above facts and law, it is evident that Shri Vinod Kumar and Shri Ramesh Kumar, Shri Jeet Singh, Shri Kalu Ram and Shri Hriday Kumar were placed on one and the same pedestal, as on 11.12.2006. They cannot be treated differently. The management projects that case of claimant was not considered since prior to decision of the competent authority, he breathed his last. Evidently, regularization in service was given with retrospective effect, viz. 11.12.2006, on which date the claimant was very much alive. Contention, put forth by the management that the claimant was not in a position to undergo medical examination and verification of his character and antecedents, is uncalled for. It is not the case of the management that in December 2006 or thereafter, late Shri Vinod Kumar was not medically fit to join his duties on regular basis. It is also not a case that Shri Vinod Kumar was involved in any criminal case, hence not eligible for regularization of his services. Considering all these facts, I am of the considered opinion that late Shri Vinod Kumar is entitled for regularization of his services from 11.12.2006, the date when his juniors were regularized as mason in service of the management. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No.II

21. Smt. Anita Devi could not point out anything in her favour to project that her husband was entitled for regularization of service with effect from 01.07.1986. As detailed above, Shri Vinod Kumar was engaged in an irregular manner as mason on hand receipt basis on 01.07.1986. The Apex Court had ruled in clear terms that an employee engaged in an irregular manner has no right to continue in service, not to talk of regularization of their services. Thus, it is evident that Shri Vinod Kumar was not entitled for regularization in service with effect from 01.07.1986, the date of his initial engagement as mason on hand receipt basis. However, pursuant to directions given

by the Apex Court in Uma Devi (Supra), his case has been considered by the Tribunal and it is ruled that he was entitled for regularization in service with effect from 11.12.2006, the date when his juniors were regularized.

22. Shri Vinod Kumar is deemed to have rendered service as regular mason from 11.12.2006 to 25.01.2009, the date when he breathed his last. Smt. Anita Devi projects that pensionery benefits were not granted to her by the management. Question for consideration would be as to whether she is entitled to family pension. Family pension is granted to the family of a Government service in the event of his death while in service or after retirement. Family Pension Scheme 1964 was introduced with effect from 01.01.1964. As per the Scheme, in the event of death of a Government servant while in service or after retirement, his family will get family pension if-

(i) In the case of death while in service-

(a) He has completed a minimum period of one years' service; or

(b) He had been medically examined and found fit for appointment in Government service when his death occurred before completion of one years' service.

(ii) In case of death after retirement-

He was on the date of death in receipt of pension or compassionate allowance.

23. Family pension is payable to the family of the deceased Government servant/pensioner. In the scheme, family has been defined to mean-

(i) Wife (whether marriage took place before or after retirement in the case of male Government servant,

(ii) Husband (whether marriage took place before or after retirement) in the case of female Government service,

(iii) Unmarried son(s)/unmarried daughters (born before or after retirement) who have not attained the age of 25 years.

(iv) Widowed daughters/divorced daughter (born before or after retirement) without any age restriction.

(v) Parents who were wholly dependent on the Government servant when he was alive, provided that the deceased Government servant had left behind neither the widow/widower nor an eligible son or daughter or a widowed/divorced daughter and that the earnings of the parents is not more than Rs. 3500.00 per month.

Unmarried son(s) below the age of 25 years or married daughter below the age of 25 years include such sons and daughters adopted before or after retirement. Wife or husband shall include respectively judicially separated wife and husband.

24. From January 2006, period for which family pension is payable is as follows:

(i) In the case of childless widow, for life or till her independent income from all sources becomes equal to Rs.3500.00 per month or more, i.e. even after remarriage.

(ii) In the case of widow with child (ren) or widower upto to the date of death or remarriage, whichever is earlier.

(iii) In the case of unmarried son/unmarried daughter, until he/she attains age of 25 years or upto to the date of his/her marriage or till the date from which her/his income becomes equal to Rs.3500.00 or more per month.

(iv) In the case of widow (including widowed/ disabled) /divorced daughter(s) (including disabled) for life up to the date of her remarriage or till the date his/her income becomes equal to Rs.3500.00 or more per month, or death, whichever is earlier. Such daughter shall not be required to come back to her parental home.

(v) In the case of wholly dependent parents (till his/ her death).

25. As projected above, late Shri Vinod Kumar completed more than 2 years service, on the date when he expired in January 2009. Minimum service for a period of one year rendered by a deceased employee would entitled his widow for family pension. Since the management had not considered the case of Smt. Anita Devi for family pension, it is commanded that her case would be considered for family pension on the parameters referred above. In case her earning was not more than Rs.3500.00 in January 2009, she would be sanctioned family pension as per scheme referred above.

26. Smt. Anita Devi seeks appointment on compassionate grounds. Her case was not considered at all by the management projecting that her husband was a daily wager at the time of his death. Since late Shri Vinod Kumar is deemed to have been confirmed in service with effect from 11.12.2006, it would be taken into consideration as to whether Smt. Anita Devi is entitled for compassionate appointment in the service of the management. For an answer to this proposition, the Tribunal is left with no option but to consider the scheme of appointment of compassionate appointment adopted by the Government of India. It shall be in the fitness of things to ascertain as to what that scheme is and to whom it is applicable.

27. Scheme of compassionate appointment applies to dependent family member-

(B) of a Government servant who-

(a) dies while in service(including death by suicide), or

(b) is retired on medical grounds under Rule 2 of the CCS(Medical Examination) Rules, 1957, or

(c) is retired on medical grounds under Rule 38 of the CCS(Pension) Rules, 1972, or

(C) of a member of the Armed Forces who-

(i) dies during service; or

(ii) is killed in action; or

(iii) is medically boarded out and is unfit for civil employment

Government servant for the purpose of the scheme means, a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis.

28. Dependent family members has been advised to mean:

(a) spouse; or

(b) son (including adopted son); or

(c) daughter(including adopted daughter); or

(d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred above, who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

29. Compassionate appointment can be made to Group 'C' or Group 'D' posts against direct recruitment quota. For consideration of application for compassionate appointment family of the Government servant who died in harness or retired on medical grounds should be indigent and deserves immediate assistance for relief from financial destitution and applicant for compassionate appointment should be eligible and suitable for the post in all respects. Compassionate appointments are exempted from observance of:

(a) Recruitment procedure.

(b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate of Employment and Training.

(c) The ban orders on filling of posts issued by the Ministry of Finance (Department of Expenditure).

30. Upper age-limit could be relaxed wherever found to be necessary. The lower age-limit should, however, in no case be relaxed below 18 years of age. Age eligibility is to be determined with reference to the date of application and not the date of appointment. Secretary to the Ministry/ Department concerned is competent to relax temporarily educational qualifications as prescribed in the relevant recruitment rules. In case of appointment at the lowest level, that is, Group 'D' or LDC post, in exceptional circumstances where the condition of the family is very hard, such relaxation will be permitted up to a period of 2 years beyond which no relaxation of educational qualification will be admissible and services of the person concerned, if still unqualified are liable to be terminated. Where widow is appointed on compassionate ground to a Group 'D' post, she will be exempted from the requirement of possessing the educational qualification prescribed in the relevant rules, provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications.

31. Appointment on compassionate grounds should be made only on regular basis and that too only, if regular vacancies meant for that purpose are available. Such appointments can be made upto 5% of the vacancies falling under direct recruitment quota in any Group 'C' or 'D' posts. Ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family members of Government servant on casual, daily wage, ad hoc, contract basis against regular vacancies. There is no bar in considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments.

32. Application for compassionate appointment can be considered, if it is made belatedly, say moved after 5 years of the death of the Government servant or so. While considering such belated requests, it should, however, be kept in view that concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relive it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. So such belated requests call for a great deal of circumspection. Request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical grounds of Government servant and not the age of the applicant at the time of consideration.

33. The person appointed on compassionate grounds under the scheme should give an undertaking in writing that he/she will maintain properly other family members who were dependent on the Government servant and in case it is proved subsequently that the family members are being neglected or are not being maintained properly, his appointment may be terminated forthwith. While considering request for appointment on compassionate grounds, balanced and objective assessment of financial condition of the family is to be made taking into account its assets and liabilities (including benefits received under various welfare schemes) and all other relevant factors, such as, presence of an earning member, size of the family, age of the children and the essential needs of the family. The whole object of granting compassionate appointment

is to enable the family to tide over the sudden crises and to relive the family from financial destitution and to help it get over the emergency.

34. The Apex court in G.Anantha Rajeshwara Rao (1994 (1) SCC 192) had considered the scheme of compassionate appointments formulated by the Government of India and ruled that appointment on grounds of descent clearly violates article 16(2) of the Constitution, but if the appointment is confined to the son or daughter or widow of the Government servant who die in harness, who need immediate appointment on the ground of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of economies from the bread winner to relieve to distress of the members of the family, it is unexceptionable. Again in Umesh Kumar Nagpal (JT 1994 (3) SC 5325) the Apex Court considered the scheme and laid down following principles in that regards:

(1) Only dependents of an employee dying in harness, leaving his family in penury and without any source of livelihood can be appointed on compassionate grounds.

(2) The posts in group "C" and "D" are the lowest posts in non managerial and managerial categories and hence those posts alone can be offered on compassionate grounds.

(3) The whole object of granting compassionate appointments is to enable the family to tide over the crisis and to relieve the family of the deceased from destitution and to help it get over the emergency.

(4) Offering compassionate appointments as a matter of course, irrespective of financial condition of the family of the deceased or medically retired government servant, is legally impermissible.

(5) Neither the qualification of the applicant (dependent family member) nor the post held by the deceased or medically retired government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to accept it. The post is not to be offered to cater his status but to see family through the economic calamity.

(6) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in the future, and

(7) Compassionate appointment cannot be offered by an individual functionary or an ad hoc basis.

35. In Asha Ram Chander Ambedker and others (Jt 1994 (2) SC 183) the Apex Court ruled that the High Courts and Administrative Tribunals cannot give directions for appointment of a person on compassionate ground but can merely direct consideration of the claim for such appointment. In Dinesh Kumar (JT 1996 (5) SC 319) and Smt. A.Radhika Therumalai (JT 1996 (9) SC 197) it was announced that appointment on compassionate ground can be made only, if a vacancy is available for that purpose. In Rami Devi and others (JT 1996 (6) SC 646) it was ruled that if the scheme relating to appointment on compassionate ground is accepted to all sort of casual, ad hoc employees, including those who are working as apprentice, then the scheme cannot be justified on constitutional grounds.

36. Coming to factual matrix of the controversy, admittedly Shri Vinod Kumar expired in January 2009. Smt. Anita Devi and her children could pull on till date. She could not project any facts to the effect that she was living in penury and in need of immediate assistance. She could manage her affairs for a period of more than 5 years. Considering all these facts, I do not find it to be case where command should be given to the management to give compassionate appointment to Smt. Anita Devi to relieve her family from financial destitution. In view of these reasons, I am of the considered opinion that Smt. Anita Devi could not project a case for grant of compassionate appointment in her favour.

37. In view of the foregoing discussions, it is ruled that Shri Vinod Kumar would be regularized in service as mason by the management from 11.12.2006, the date when his juniors were regularized. Since on his regularization with effect from 11.12.2006, he would be deemed to have rendered qualifying service for grant of family pension in favour of his widow. In case her income from all sources remain below Rs.3500.00 per month in January 2009, she would be granted family pension by the management. However Smt. Anita Devi is not entitled for appointment on compassionate grounds. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 03.06.2014

नई दिल्ली, 26 जून, 2014

का.आ. 1909.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, हैवी अल्लोव पेनेट्रेटर प्रोजेक्ट और अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 28/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–42012/151/2012–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 28/2013) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Heavy Allow Penetrator Project & Others and their workman, which was received by the Central Government on 24/06/2014.

[No. L-42012/151/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Thursday, the 22nd May, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 28/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Sri Security Services and their workman)

BETWEEN:

Sri S. Suresh : 1st Party/Petitioner

AND

1. The General Manager, Heavy Allow Penetrator Project, Ministry of Defence, Trichy-620025 : 2nd Party/1st Respondent

2. M/s Sri Security, Trichy-Pudukkottai Main Road, Anna Nagar, Mathur (Post), Pudukkottai-622515 : 2nd Services Party/ 2nd Respondent

Appearance:

For the 1st Party/Petitioner : Sri D. Muthukumar, Advocate

For the 2nd Party/1st Respondent : Sri B. Sekar, Advocate

For the 2nd Party/2nd Respondent: Set Ex-parte

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/151/2012-IR(DU) dated 25.02.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of M/s Shree Security Services in dismissing Sri A. Suresh from 05.12.2011, a contract workman on the direction of HAPP is legal and justified? If not, what relief the concerned workman is entitled to?"

2. On the receipt of the Industrial Dispute this Tribunal has numbered it as ID 28/2013 and issued notices to both sides. The petitioner and the First Respondent has entered appearance. Subsequently, both Respondents having remained absent, they were set ex-parte. The First Respondent got the ex-parte order set aside on application and filed Counter Statement. However, the First Respondent have remained absent at the later stage and was again set ex-parte.

3. The petitioner has set forth his case in the Claim Statement filed by him. As seen from this, in the year 1999 he was employed as a Contract Labour to do the cleaning, sweeping and other works in the First Respondent establishment. In the year 2000 problems had arisen between the contract workers and the management regarding increment on wages and failure to pay minimum wages. The workers had entered in a strike and after this the Management had been paying wages @ Rs. 70/- per day from 2001. A board of Enquiry was set up by the Management to look into the issue of non-payment of minimum wages to the contract labourers. The board had submitted report making certain suggestions. However, no action was taken on the basis of these suggestions. After complaints from the contract workers regarding non-payment of minimum wages the authorities of the First Respondent started to destroy material evidence from the factory premises. The petitioner who was cleaning the dustbin found some of those documents and informed the local Vigilance Officer. But no action was taken in this respect. The petitioner and the other workers had taken up the matter to the national level investigation agencies. The petitioner had appeared as a witness when action was taken against a permanent employee of the Respondent. On account of all this, the First Respondent directed the Second Respondent to terminate the petitioner from service. Accordingly, the Second Respondent had terminated the petitioner from service by order dated 05.04.2011. The termination of the petitioner is unfair labour practice. The petitioner seeks an order holding that the termination order passed by the Second Respondent based on the direction given by the First Respondent is illegal and directing the Respondents to reinstate the petitioner in service.

4. In the counter statement filed it the First Respondent has denied the allegations made by the petitioner. However,

it is admitted in the Counter Statement that the petitioner was employed by the Second Respondent. It is also admitted that it was as instructed by the First Respondent that the Second Respondent did not deploy the petitioner in the First Respondent establishment. According to the First Respondent the petitioner was unauthorizedly in possession of an official document which amounts to misconduct. This is why he was prevented from attending the job.

5. The evidence in the case consists of affidavit in lieu of Examination filed by the petitioner and the documents marked as Ext.W1 to Exts.W11 on his side.

6. **The points of consideration are**:

(i) Whether the action of the Second Respondent in terminating the service of the petitioner is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The Points

7. The petitioner has reiterated his case in the Claim Statement and in the affidavit of examination filed by him also. It is clear from his affidavit that he was working as a contract labourer as engaged by the Second Respondent, the Contractor, in the First Respondent establishment. It is apparent from the counter filed by the First Respondent also that the petitioner was doing the work of cleaning, sweeping, etc. for the First Respondent.

8. It is revealed from the Claim Statement as well as affidavit of the petitioner that he was terminated from service by the Second Respondent as asked by the First Respondent. The stand of the First Respondent in the Counter Statement is that he was unauthorizedly found in possession of certain documents. The petitioner has given evidence in the enquiry proceedings taking disciplinary action against a regular employee of the First Respondent. According to the First Respondent during his evidence the petitioner has revealed that he has been in possession of official documents. It was due to this the Second Respondent was asked not to engage the petitioner in the premises of the First Respondent, it is stated. However, the Respondents have remained absent and have not made any attempt to establish the case. The Second Respondent had remained absent throughout and the First Respondent had remained absent after filing Counter Statement. No evidence is available to show that the petitioner has done anything against the interest of the First Respondent. The petitioner has produced copy of the deposition given by him in the enquiry proceedings against the regular employee of the First Respondent and this is marked as Ext.W6. As could be seen no valid reason is available for the Second Respondent for terminating the service of the petitioner. The termination was done without complying with the provisions of ID Act. Therefore, the petitioner is entitled to be reinstated in service.

9. The counsel for the petitioner has argued that it is not enough that direction is given to the Second Respondent to reinstate the petitioner in service. According to the counsel, direction should be given to the First Respondent also in which case only the petitioner would be able to work in the premises of the First Respondent. The petitioner was only a contract labour under the Second Respondent. It is for the Second Respondent to decide where the petitioner is to be deployed for work. The petitioner could not insist that he should be allowed to work with the First Respondent itself. The Second Respondent is the one who has terminated the petitioner from service and direction should be given to the Second Respondent only. Accordingly, the Second Respondent is directed to reinstate the petitioner in service within a month.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd May, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	28.06.2000	Report submitted by Board of enquiry
Ex.W2	23.09.2003	Letter issued by the Labour Enforcement Officer
Ex.W3	27.06.2006	Appointment of Mr. R.M. Pillai as Enquiry Officer
Ex.W4	09.06.2007	Report given by Mr. R.M. Pillai, Joint General Manager/Enquiry Officer
Ex.W5	22.07.2008	Order of the Assistant Provident Fund Commissioner
Ex.W6	-	Deposition and cross-examination of the petitioner before departmental enquiry with regard to Mr. K. Saravanan
Ex.W7	23.07.2012	Failure report under Section 12(4) of the ID Act.
Ex.W8	12.03.2008	Reply letter given by the First Respondent for RTI

Ex.W9	07.12.2012	Office memorandum of Central Vigilance Commission CBI Investigation Report
Ex.W10	08.08.2007	Newspaper report

On the Respondent's side

Ex. No.	Date	Description
Nil		

नई दिल्ली, 26 जून, 2014

का.आ. 1910.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट ऑफ पोस्ट ओफिसेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 29/2013) को प्रकाषित करती है, जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–40012/110/2012–आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 29/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Supdt. of Post Offices and their workman, which was received by the Central Government on 24/06/2014.

[No. L-40012/110/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT, CHENNAI

Thursday, the 12th June, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 29/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Superintendent of Post Offices and their workman)

BETWEEN:

Sri P. Nagarajan : 1st Party/Petitioner

AND

The Supdt. of Post Offices : 2nd Party/Respondent
D/o Post, Dindigul Division
Dindigul-624001

Appearance:

For the 1st Party/Petitioner : M/s R. Malaichamy, Advocates

For the 2nd Party/Management : Sri B. Sekar, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/110/2012-IR(DU) dated 28.02.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Superintendent of Post Offices, Dindigul regarding termination of service of Sri P. Nagarajan w.e.f. 31.03.2011 without following the provision of Section 25-F of the ID Act, 1947 is justifiable or not? If not, what relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 29/2013 and issued notice to both sides. Both parties have entered appearance and filed Claim and Counter Statements respectively.

3. The petitioner had raised the dispute challenging his alleged termination from the service of the Respondent w.e.f. 31.03.2011 without complying with the Section-25(F) of the Industrial Disputes Act. In the Claim Statement filed by him the petitioner has given the details of his service under the Respondent. According to him he was employed as Extra Departmental Agent (EDA) now re-designated as Gramin Dak Sevak (GDS) with the Respondent from the year 1994. He is said to have been working in this capacity at various Post Offices such as Konarpatti, Vembarpatti, Ragalapuram, Manakattur and Kunnapatti, etc. under the Respondent. According to him he had worked for more than 400 days under the Respondent during the period from 1994 to 1997. It is stated by him in the Claim Statement that though his service was utilized by the Respondent continuously it was prescribed as stop-gap arrangement. This according to the petitioner is in violation of principles of natural justice and adopting unfair labour practice. According to him he was entitled to protection under Section-25(F) of the Industrial Disputes Act, he having worked under the Respondent for more than 240 days. The petitioner seeks an order directing the Respondent to reinstate him in service with continuity of service, back wages and all other attendant benefits.

4. The Respondent has filed Counter Statement denying the averments made in the Claim Statement. According to the Respondent the petitioner was engaged on stop-gap arrangement from time to time on temporary basis for

short spells on leave of regular employees or whenever there was vacancy. He was appointed not on regular basis or even provisionally. For this reason he was not given any order of termination also. It is further stated by the Respondent that the claim of the petitioner that he has worked for more than 400 days during the period from 1994 to 1997 is not correct. According to the Respondent the post of Gramin Dak Sevak are filled in accordance with GDS (Conduct and Engagement), Rules, 2011. It is also stated by the Respondent that the petitioner is not entitled to the benefit of Section-25(F) of the ID Act since he was not appointed on a regular basis. It is also contended by the Respondent that GDS are not workmen as the Post Office is not an industry. According to the Respondent the petitioner is not entitled to the relief claimed by him.

5. The evidence in the case consists of oral evidence of the petitioner examined as WW1 and documents marked as Ext.W1 to Ext.W11. The Respondent did not adduce any evidence, either oral or documentary.

6. **The points for consideration are**:

(i) Whether the petitioner was terminated from the service of the Respondent not complying with the provisions of Industrial Disputes Act?

(ii) Whether the petitioner is entitled to reinstatement in service with attendant benefits? If not is the petitioner entitled to any other relief?

The points

7. The petitioner has filed affidavit in lieu of examination reiterating his case in the Claim Statement. In his affidavit he has admitted that he has been working with the Respondent from the year 1994 and that he had put in work of more than 400 days during 1994 to 1997. Though as per the schedule of reference the petitioner was terminated from service on 31.03.2011 there is no case for him either in his Claim Statement or in his affidavit that he had been working with the Respondent after 2007 also which is the last period of work given by him in these. However some of the documents produced by the petitioner indicate that he had worked with the Respondent for some time after this also.

8. During his cross-examination the petitioner has stated that he was working with the Respondent on stop-gap arrangement and not on the basis of any interview letter received from the Employment Exchange. He has also stated that he was not given any letter of termination by the Respondent also.

9. It is of course admitted by the Respondent in the Counter Statement that the petitioner had worked under him at times. However according to the Respondent it was only intermittently on stop-gap arrangement basis whenever any regular employee is on leave or whenever any vacancy remained to be filled up. It is claimed by the Respondent that this arrangement with the petitioner was not even provisional in nature not to state anything about being regular. The Respondent has denied claim of the petitioner that he had worked for 400 days during the period from 1994 to 1997. According to the Respondent the petitioner is not entitled event to the benefit of retrenchment under Section -25(F) of the Industrial Disputes Act.

10. Apparently the petitioner had been working with the Respondent at different spells as substitute on leave of the regular hands or as provisionally. He has admitted during his cross-examination that his engagement by the Respondent was only by way of stop-gap arrangement; He was not employed through the Employment Exchange or any other regular mode of appointment. There is prescribed mode of recruitment for the post of EDA now re-designated as Gramin Dak Sevak. So on the basis of engagement by the Respondent at some intermittent periods only he will not be entitled to reinstatement or regularization with the Respondent.

11. Probably realizing the above fact, the argument of the counsel for the petitioner has been mainly based on the scheme that has been evolved by the Respondent in respect of those who had been working under it as substitutes as provisional hands, etc.

12. The Central Administrative Tribunal (CAT) while considering a similar case has directed that the Respondent is to frame a scheme for regular absorption of all categories of casual labour who have completed 240 days of service in any two years and who are otherwise eligible for absorption against Group "D" post and appointment against vacancies in the post of Extra Departmental Agent so far as Madras Circle is concerned. On this basis of this, the Respondent has framed the scheme dated 23.12.1993 directing to prepare a dovetail list for appointment to ED posts from among casual labourers and ED Outsiders. Clause-(a) of Paragraph-4 of the scheme states that ED Outsiders whose services have been engaged before 11.02.1988 will be eligible for inclusion in the dovetail list provided they have completed 240 days of service in any two years prior to 11.02.1988 or after 11.02.1988. The clause further states that those who are engaged after 11.02.1998 are not eligible for regularization even if they have completed 240 days of service in any two years after their engagement. Clause-g of the scheme states that provisional appointees for ED posts who are appointed after 11.02.1988 and allowed to continue for more than 240 days will also be included in the dovetail list based on their seniority if they had put not less than 3 years of service as per the letter of the Respondent dated 18.05.1979. Those provisional appointees who have completed 240 days in any two years after 11.02.1988 will also be included in the dovetail list based on their seniority, it is further stated. The High Court of Madras has held in the decision of UNION OF INDIA Vs SUGUNA AND ANOTHER reported in 2006 1 CTC 25 that the benefit of the scheme evolved was liable to be extended to full time as well as part time EDA/GDS provisionally appointed or

substitute or outsiders against the existing or future vacancies of EDA / GDS. This dictum was followed in the subsequent decisions also.

13. As could be seen Clause-(a) of the scheme is in respect of persons who have been engaged by the Respondent before 11.02.1988. Even as per the Claim Statement the petitioner had started to work with the Respondent from the year 1995. So he will not be eligible to be included in the seniority list of the Respondent under Clause-(a) of the scheme.

14. The argument for the counsel for the petitioner is that he is eligible to be included in the seniority list as per Clause-g of the scheme which provides for inclusion of those persons who have been appointed after 11.02.1988 also if certain criteria is satisfied. Ext.W1 is the certificate issued by a Sub-Divisional Inspector of the Respondent sating that the petitioner had worked for 489 days by 08.12.1999 which is the date of the certificate. Ext.W2 and Ext.W3 are the details regarding the working days by the petitioner. Though these are not signed by the Respondent or by any responsible person, the correctness of the details given in these documents is not disputed. Ext.W2 is the details of the working days for the period from 22.09.1994 to 30.12.1995 which shows that the petitioner had worked for 241 days during this period. Ext.W3 shows that he had worked for 248 days for the period from 03.01.1996 to 10.06.1997. The work done is for the spells between 1 to 5 days, probably when regular hand was on leave. Ext.W4 is the pay bill showing that the petitioner had worked at Vembarpatti branch of the Respondent in January 2006 and had drawn Rs. 3,010/- as salary. Ext.W5 (series) are the pay bills for different months from January to December 2007. The petitioner had worked for the Respondent for 7 months in this year. Ext.W6 (series) would show that he had worked for the Respondent in May, June, July and August 2008 though not on all days of these months. Ext.W7 (series) would show that he had drawn salary from the Respondent in March, April, June & July 2009. Ext.W8 to Ext.W11 are all charge reports of 2009 showing that charge of a particular branch office had been given to the petitioner or he had handed over charge. Though the period for which he worked is not very clear from this, it is apparent that he had worked till 18.11.2009 at least as seen from Ext.W11. It is clear from these documents that the criteria for his inclusion in the seniority list under Clause-g of the scheme framed by the Respondent is satisfied. Within the period from 22.09.1994 to 22.09.1996 he had worked for 373 days. He will be entitled to be included in the list even though he was appointed after 11.02.1998 if he was allowed to continue for more than 240 days. It is apparent from the documents that the petitioner had put in not less 3 years of service as specified in the letter of the Respondent dated 18.05.1979 also, though intermittently. This also satisfies the criteria that the provisional appointees who have completed 240 days in any two years after 11.02.1998 also will be included in the list. In Suguna's case referred to earlier the High Court of Madras has stated that the benefit of the scheme is to be extended to outsiders also. So even if the petitioner was an outsider working as mere substitute he is eligible to be included in the list, provided other criteria are satisfied. So the petitioner is entitled to be included in the seniority list for consideration of appointment in future, even though he is not entitled to reinstatement or regularization immediately. The Respondent is liable to include his name in the seniority list.

15. Accordingly, the Respondent is directed to include the name of the petitioner in the seniority list prepared by it for Gramin Dak Sevak post and consider him for appointment on the basis of his seniority as and when vacancy arises.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri P. Nagarajan

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	08.12.1999	Order of the Sub-Division Inspector (P) Natham Sub-Division, Natham 624401
Ex.W2	22.09.1994	Working days details from 22.09.1994 to 30.12.1995
Ex.W3	03.01.1996	Working days details from 03.01.1996 to 10.06.1997
Ex.W4	January 2006	Pay Bill
Ex.W5	January 2007 to Dec. 2007	Pay Bills
Ex.W6	May 2008 to August 2008	Pay Bills
Ex.W7	March 2009 to July 2009	Pay Bills
Ex.W8	13.03.2009	Order of stop gap arrangement
Ex.W9	24.03.2009	Order of stop gap arrangement
Ex.W10	14.11.2009	Order of stop gap arrangement
Ex.W11	18.11.2009	Order of stop gap arrangement

On the Management's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 26 जून, 2014

का.आ. 1911.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट ऑफ पोस्ट ओफिसेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 31/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–40012/103/2012–आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1911.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 31/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Supdt. of Post Offices and their workman, which was received by the Central Government on 24/06/2014.

[No. L-40012/103/2012-IR (DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 12th June, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 31/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Superintendent of Post Offices and their workman)

BETWEEN

Sri V. Ganesan : 1st Party/Petitioner

AND

The Supdt. of Post Office : 2nd Party/Respondent
Department of Posts
Pudukkottai Division,
Pudukkottai
Pudukkottai-622001

Appearance :

For the 1st Party/Petitioner : M/s R. Malaichamy, Advocates

For the 2nd Party/Management : Sri B. Sekar, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/103/2012-IR(DU) dated 25.02.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

> "Whether the demand of the workman Sri V. Ganesan for regularization as Gramin Dak Sevak is legal and justified? If so, what relief the concerned workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 31/2013 and issued notice to both sides. Both parties have entered appearance and filed Claim and Counter Statements respectively.

3. The petitioner has raised the dispute claiming regularization in the service of the Respondent. In his Claim Statement he is claiming reinstatement by the Respondent. According to the petitioner he was being engaged by the Respondent as Extra Departmental Delivery Agent from the year 1990 as substitute for the regular hand. He was appointed on provisional basis at Pudukottai branch of the Respondent on 14.06.1998 and had worked there till 31.07.1998. According to him he was being appointed on provisional basis at different periods after this also. He had worked with the Respondent thus till 31.07.2011. In the meanwhile he had made several representations to the Respondent to absorb him against a regular vacant post. But the Respondent had not considered his request. After 31.07.2011 he was not given any work also. According to the petitioner he having put in more than 21 years of service with the Respondent he was entitled to absorption with the Respondent. He has further stated that he was entitled to protection under Section-25(F) of the ID Act. The petitioner had claimed that the Respondent is liable to reinstate him in service with continuity of service, back wages and other attendant benefits.

4. The Respondent has filed Counter Statement denying the averments made in the Claim Statement. According to the Respondent the petitioner was being engaged only as a substitute on leave of the regular hands. This was only a stop-gap arrangement and not an appointment on provisional basis. According to the Respondent, since the petitioner was not recruited as per the Recruitment Rules, he has no right for claiming regularization in view of the dictum laid down by the Apex Court in the matter. The Respondent has further stated in the Counter Statement that the petitioner having been an officiating outsider against leave vacancy he should have participated in the recruitment process to be recruited in the service of the Respondent. The Respondent has also stated that the petitioner is not entitled to the protection under Section-25(F) of the ID Act also, he having been engaged only

against leave vacancy. According to the Respondent the petitioner is not entitled to any relief.

5. The petitioner has examined himself as WW1 and marked Ext.W1 to Ext.W9 on his side to substantiate his case. The Respondent did not adduce any evidence either oral or documentary.

6. The point for consideration is :

> "Whether the petitioner is entitled to regularization as Gramin Dak Sevak in the service of the Respondent. If not what is the other relief, if any to which he is entitled?"

The Point

7. The petitioner has filed affidavit in lieu of Chief Examination reiterating his case in the petition. He has stated during his cross-examination that he is not employed through Employment Exchange. Always it was provisional appointment from time to time with certain conditions, by the Respondent.

8. The evidence given by the petitioner and the documents marked as Ext.W1 to Ext.W9 would show that the petitioner was being appointed by the Respondent provisionally as Extra Departmental Delivery Agent from time to time starting from 13.06.1998. The petitioner has produced documents showing his provisional appointment upto 15.10.2002. Though it is claimed by him that he was being appointed prior to 1998 also as substitute and was appointed provisionally after 2002 also until 2011 he has not produced any documents pertaining to these.

9. On the basis of his provisional appointments alone, the petitioner would not be entitled to reinstatement and regularization in service as claimed by him. There are rules specifying the manner in which recruitment is to be made to the post of Extra Departmental Delivery Agent which is now known as Gramin Dak Sevak Delivery Agent. His provisional appointments by itself will not give him any right for regularization.

10. The counsel for the petitioner has been harping on the scheme that was framed by the Respondent on the basis of the direction of the Central administrative Tribunal (CAT) for claiming absorption by the petitioner. The CAT has directed in a similar case that the Respondent is to frame a scheme for regular absorption of all categories of casual labour who have completed 240 days of service in any two years and who are otherwise eligible for absorption against Group "D" post and appointment against vacancies in the post of Extra Departmental Agent so far as Madras Circle is concerned. On this basis of this, the Respondent has framed the scheme dated 23.12.1993 directing to prepare a dovetail list for appointment to ED posts from among casual labourers and ED Outsiders. Clause-(a) of Paragraph-4 of the scheme states that ED Outsiders whose services have been engaged before 11.02.1988 will be eligible for inclusion in the dovetail list provided they have completed 240 days of service in any two years prior to 11.02.1988 or after 11.02.1988. The clause further states that those who are engaged after 11.02.1998 are not eligible for regularization even if they have completed 240 days of service in any two years after their engagement. Clause-g of the scheme states that provisional appointees for ED posts who are appointed after 11.02.1988 and allowed to continue for more than 240 days will also be included in the dovetail list based on their seniority if they had put not less than 3 years of service as per the letter of the Respondent dated 18.05.1979. This provisional appointees who have completed 240 days in any two years after 11.02.1988 will also be included in the dovetail list based on their seniority, it is further stated. The High Court of Madras has held in the decision of UNION OF INDIA Vs SUGUNA AND ANOTHER reported in 2006 1 CTC 25 that the benefit of the scheme evolved was liable to be extended to full time as well as part time EDA / GDS provisionally appointed or substitute or outsiders against the existing or future vacancies of EDA / GDS. This dictum was followed in the subsequent decisions also.

11. Even as per the Claim Statement of the petitioner he started to work for the Respondent as substitute for regular hands only after 1990. Clause-(a) of the scheme being in respect of those who have been engaged before 11.02.1988 only the petitioner will not be entitled to inclusion in the seniority list under this clause. Ext.W1 is the order of provisional appointment of the petitioner as EDDA for one and half months from 14.06.1998 to 31.07.1998. Exts.W2 to Exts.W9 are the orders of provisional appointment for different periods in between 16.06.2000 and 12.07.2002. In between the period of 16.06.2002 to 05.03.2002 itself the petitioner had worked provisionally with the Respondent for 435 days. Apart from this, he had worked for another 90 days more in the same year. There is also the provisional appointment for one and half months in the year 1998. So definitely the petitioner will come under Clause-g of the scheme, he having worked for more than 240 days after 11.02.1988. The criteria that he should have put in not less than 3 years of service as per the letter of the Respondent dated 23.02.1979 also is satisfied, he having worked for a period spreading over more than 4 years starting from 11.02.1988. So the petitioner is entitled to be included in the dovetail list as per Clause-g of the scheme. He is to be considered for regular appointment on the basis of his seniority as and when vacancy arises.

12. On the basis of the discussion above, the respondent is directed to include the petitioner in the seniority list prepared by him and considered for absorption in the department as Gramin Dak Sevak Delivery Agent as and when vacancy arises.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri V. Ganesan

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	13.06.1998	Provisional Appointment
Ex.W2	16.06.2000	Extension of Provisional Appointment
Ex.W3	15.09.2000	Extension of Provisional Appointment
Ex.W4	14.11.2000	Extension of Provisional Appointment
Ex.W5	05.02.2011	Extension of Provisional Appointment
Ex.W6	18.05.2011	Extension of Provisional Appointment
Ex.W7	15.06.2011	Extension of Provisional Appointment
Ex.W8	06.12.2001	Extension of Provisional Appointment
Ex.W9	12.07.2002	Extension of Provisional Appointment

On the Management's side

Ex. No.	Date	Description
Nil		

नई दिल्ली, 26 जून, 2014

का.आ. 1912.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सुपरिन्टेन्डेन्ट ऑफ पोस्ट ओफिसस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 32/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. एल–40012/102/2012–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 26th June, 2014

S.O. 1912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 32/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Supdt. of Post Offices and their workman, which was received by the Central Government on 24/06/2014.

[No. L-40012/102/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 12th June, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 32/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Superintendent of Post Offices and their workman)

BETWEEN:

Sri K. Sundararajan : 1st Party/Petitioner

AND

The Supdt. of Post Offices Department of Posts, Pudukottai Pudukottai-622001 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : M/s R. Malaichamy, Advocates

For the 2nd Party/Management : Sri B. Sekar, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/102/2012-IR(DU) dated 25.02.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the demand of the workman Sri K. Sundararajan for regularization as Gramin Dak Sevak is legal and justified? If so, what relief the concerned workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 32/2013 and issued notice to both sides. Both parties have entered appearance and filed Claim and Counter Statements respectively.

3. The petitioner has raised the dispute claiming regularization in the service of the Respondent as Gramin Oak Sevak (GDS). According to the petitioner, he had entered in the service of the Respondent for the first time in the year 1990 as substitute for the regular Extra Departmental Delivery Agent which is later renamed as Gramin Dak Sevak Delivery Agent. He was appointed at Mangottai branch of the Respondent on 01.03.1998 on provisional basis and worked there till 30.04.1998. After this date also he was working with the Respondent. He was appointed at Vallthirakottai branch w.e.f. 15.02.2001 and had worked there till 14.05.2001. Thereafter he was posted at Venkitakulam branch by order dated 13.08.2001 and his period was extended from time to time. He had worked at Rasiyamangalam also. He was working at various Post Offices after 26.07.2006 also and had worked till 30.05.2011. According to the petitioner after this date he was denied work in spite of several representations made by him for absorption in the post of GDS with the Respondent. According to him he is entitled to absorption, he having put in service of more than 21 years. It is further stated by the petitioner that he was entitled to protection under Section-25(F) of ID Act. The petitioner seeks an award directing the Respondent to reinstate him in service with all attendant benefits.

4. The Respondent has filed Counter Statement denyjng the averments made in the Claim Statement. According to the Respondent the petitioner has been engaged only as a substitute during the period of leave of regular hands. It was only a stop-gap arrangement and not an appointment of regular basis. It is stated by the Respondent that the petitioner is not entitred to regularization or absorption as claimed by him.

5. The petitioner has examined himself as WW1 and marked documents Ext.W1 to Ext.W6 on his behalf. The Respondent did not adduce any evidence, oral or documentary.

6. **The point for consideration** is:

> "Whether the petitioner is entitled to an order for regularization as Gramin Dak Sevak in the service of the Respondent. If not, what if any is the relief to which he is entitled?"

The Point

7. In the affidavit in lieu of Chief Examination filed by the petitioner he has reiterated the case in the Claim Statement. He has stated that he has been wrongly denied work by the Respondent According to him he is entitled to reinstatement in the service of the Respondent.

8. It is clear from the documents marked as Ext.W1 to Ext.W6 that the petitioner was being engaged from time to time by the Respondent on provisional basis as Extra Departmental Delivery Agent and subsequently as Gramin Dak Sevak Delivery Agent after the post was renamed so. Ext.W1 the provisional appointment order shows that he was being appointed at least from 1998 and continued to be appointed so until 30.03.2002. The contention that is raised by the Respondent is that the petitioner was being appointed only by way of stop gap arrangement, that his appointment being not regular in nature he is not entitled to any absorption or regularization. It is stated by the Respondent in the Counter Statement that regular appointment for the post can be made only by resorting to the provisions of Gramin Dak Sevak (Conduct and Engagement) Rules, 2011. It is clear from the admission made by the petitioner himself during his cross-examination that he was appointed not on the basis of any interview consequent to a call letter through the Employment Exchange. Though the petitioner had been working with the Respondent for some time, in none of the years he had worked for 240 days also to entitle him to the protection of Section-25(F) of the ID Act.

9. However, the Respondent has framed a scheme for absorption of persons like the petitioner who were appointed on provisional basis. The scheme was the result of a decision of the Central Administrative Tribunal (CAT), Madras Bench on the basis of petitions filed by certain persons who were being employed by the Respondent provisionally even before 1988. The CAT had directed that a scheme for regular , absorption of all categories of casual labour who had completed 240 days of service in any two years, who are otherwise eligible for absorption. On the basis of this direction a scheme had been framed and this has come into effect on 23.12.1993. The scheme states that a dovetail list is to be prepared from among casual labourers and ED Outsiders for appointment to ED posts. Clause-(a), Para-4 of the scheme states that ED Outsiders whose services have been engaged before 11.2.1988 will be eligible for inclusion in the dovetail list. These persons should have completed 240 days of service in any two years prior to 11.02.1988 or after 11.02.1988. It is further stated that candidates initially engaged in service after 11.02.1998 are not eligible for regularization even if they have completed 240 days of service in any two years after their engagement. Clause-g states that provisional appointees for ED posts who are appointed after 11.02.1988 and allowed to continue for more than 240 days will also be included in the dovetail list based on their seniority if they had put in not less than 3 years of service as per the letter of the Respondent dated 18.05.1979. The provisional appointees who had completed 240 days in any two years after 11.02.1988 will also be included in the dovetail list based on their seniority, it is further stated in the clause. The Madras High Court has held in UNION OF INDIA VS. SUGUNA AND ANOTHER reported in 2006 1 CTC 25 that the benefit of the scheme evolved was liable to be extended to full time as well as part time EDA/GDS provisionally appointed or substitute or outsiders against the existing

or future vacancies of EDA/GDS. This dictum was followed in the subsequent decisions also.

10. The argument of the counsel for the petitioner is that the petitioner is entitled to be included in the seniority list in any case and could be considered for regularization as and when vacancy arises. The petitioner will be entitled to such inclusion in the seniority list only if he comes under Clause-a or Clause-g referred to above.

11. The documents produced by the petitioner shows his first appointment in February 1998 only. Clause-a being in respect of persons who were engaged prior to 11.02.1988 the petitioner will not be entitled to the benefit of this clause. Now it is to be seen whether he is entitled to the benefit of Clause-g of the scheme. Though it is claimed by the petitioner that he used to be engaged by the Respondent as substitute from the year 1990, those documents are not produced. Only the documents showing his appointment on provisional basis starting from March 1998 are produced. As seen from Ext.W1 he was given provisional appointment at Mangottai branch for the period from 01.03.1998 to 30.04.1998. Ext.W2 shows that he was appointed provisionally at the same branch for a period from 01.05.1998 to 31.07.1998. As seen from Ext. W3 he was , provisionally appointed at Vallthirakottai branch for 3 months from 15.02.2001 to 14.05.2001. Ext.W4 shows that he was again appointed from the next date i.e. 15.05.2001 to 14.07.2001. Ext.W5 is the order appointing him at Venkitakulam branch for two months from 14.08.2001 to 13.10.2001 and Ext.W6 is the order appointing him at the same branch for the period from 01.04.2002 to 30.06.2002. As per Clause-g of the scheme, to be included in the seniority list the person need to have worked for 240 days only within a period of 2 years. As seen from the documents referred to above the petitioner had been engaged for 300 days within two years starting from 15.02.2001 to 30.06.2002. He had worked for another 150 days in 2008 also. So it is a case where the petitioner will come under Clause-g of the scheme and will be entitled to the benefit of the scheme. Therefore, the petitioner is entitled to be included in the seniority list prepared by the Respondent and for consideration for absorption, if not for immediate absorption or regularization. He is entitled to a relief to this extent.

12. Accordingly the Respondent is directed to include the petitioner in the seniority list prepared as per the scheme dated 23.12.1993 and consider him for absorption in the service of the Respondent as and when vacancy arises.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 12th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri K. Sundararajan

For the 2nd Party/ Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	28.02.1998	Provisional Appointment
Ex.W2	01.05.1998	Extension of Provisional Appointment
Ex.W3	15.02.2001	Extension of Provisional Appointment
Ex.W4	14.05.2001	Extension of Provisional Appointment
Ex.W5	13.08.2001	Extension of Provisional Appointment
Ex.W6	30.03.2002	Extension of Provisional Appointment

On the Management's side

Ex.No.	Date	Description

Nil

नई दिल्ली, 27 जून, 2014

का.आ. 1913.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर टेलीकॉम, भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 63/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/06/2014 को प्राप्त हुआ था।

[सं. 40011/20/2007–आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 27th June 2014

S.O. 1913.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 63/2007) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager Telecom District, Mahanagar Sanchar Nigam Ltd. and their workman, which was received by the Central Government on 24/06/2014.

[No. L-40011/20/2007-IR(DU)]

P. K. VENUGOPAL, Section Officer

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Shri Mahendra Pal Singh S/o. Shri Harbhajan Singh,

R/o Malakheda Gate, Near Gurudwara,
Distt.- ALWAR (Rajasthan)

V/s.

1. The General Manager Telecom District,
Bharat Sanchar Nigam Ltd.,
Moti Doongari,
ALWAR (Rajasthan)

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2. "Whether the demand of the Rajasthan Sarvajanik Kshetra Karamchari Sangh for appointment of Shri Mahendra Pal Singh as Driver, in terms of the settlement dated 28-7-1997, is legal and justified ? If yes, to what relief the workman is entitled to?"

3. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः प्रार्थी श्रमिक का कथन है कि इस विवाद से पहले उसने अपनी सेवामुक्ति के विरूद्ध एक औद्योगिक विवाद उठाया था जिसमें प्रार्थी का यह कथन था कि उसने दिनांक 25.4.87 से दिनांक 2.4.98 तक और दिनांक 31.1.91 से दिनांक 4.4.91 तक वाहन चालक के पद पर कार्य किया था लेकिन उसे दिनांक 3.4.88 और दिनांक 5.4.91 को अवैध रूप से सेवामुक्त कर दिया गया। यह विवाद न्यायनिर्णयन हेतु केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर को भेजा गया जिसमें दोनों पक्षों के बीच दिनांक 28.7.97 को समझौता हुआ। इस समझौते के आधार पर दिनांक 28.7.97 को केन्द्रीय औद्योगिक न्यायाधिकरण जयपुर ने अवार्ड पारित किया।

4. आगे प्रार्थी श्री महेन्द्र पाल सिंह का यह कथन है कि अवार्ड दिनांकित 28.7.97 के अनुसार महेन्द्र पाल सिंह को नई नियुक्ति दी जानी थी और वह सेवामुक्ति से पूर्व वाहन चालक के पद पर कार्यरत था अतः उनकी नियुक्ति वाहन चालक के पद पर ही दी जानी थी, लेकिन विपक्षी भारत संचार निगम लिमिटेड़ के अधिकारियों ने श्री महेन्द्र पाल सिंह को अवार्ड के विपरीत दिनांक 30.3.98 को मजदूर के पद पर नियुक्ति दी और उन्हें मजदूर के पद पर ही नियमित किया है जो पूर्णतया अनुचित व अवैध है। प्रार्थी का यह भी कहना है कि दिनांक 30.3.98 को उसे मजदूर के पद पर नियुक्ति दी गई लेकिन उससे ड्राईवर का कार्य लिया जा रहा है।

5. यह भी कहा गया है कि महेन्द्र पाल सिंह द्वारा समस्त योग्यता पूरी करने के बावजूद चालक के पद पर नियुक्ति नहीं दी गई और न ही नियमित किया गया जबकि उससे जूनियर श्रमिक श्री हुकमचन्द सैनी और श्री चुन्नीलाल को चालक के पद पर नियुक्ति दी गई है और उन्हें नियमित भी कर दिया गया है।

6. यह भी कहा गया है कि श्री महेन्द्र पाल सिंह अपनी प्रथम नियुक्ति से ही ड्राईवर के पद पर कार्य करते थे अतः उन्हें अवार्ड के पष्चात् ड्राईवर के पद पर ही नियुक्त किया जाना था तथा इसी पद पर नियमित भी किया जाना था।

7. यह भी कहा गया है कि विपक्षीगण द्वारा उक्त कार्यवाही न केवल अवार्ड की अवहेलना है बल्कि अन्फेयर लेबर प्रेक्टिस भी है।

8. उक्त कथन के साथ प्रार्थी ने प्रार्थना की है कि न्यायाधिकरण द्वारा यह घोषणा करने की कृपा की जाय कि श्री महेन्द्र पाल सिंह दिनांक 30.3.98 से ही चालक के पद पर नियमित नियुक्ति प्राप्त करने के हकदार हैं और ड्राईवर का वेतन व भत्ता तथा अन्य परिलाभ भी पाने का अधिकारी है।

9. विपक्षी भारत संचार निगम लिमिटेड़ की तरफ से वादोत्तर प्रस्तुत कर स्टेटमेन्ट ऑफ क्लेम के प्रस्तर 1,2,3,4 और 5 के सम्बन्ध में यह कहा गया है कि इन प्रस्तरों में प्रार्थी द्वारा जिस प्रकार कथन किया गया है वह अस्वीकार है। इसके अतिरिक्त यह कहा गया है कि प्रार्थी श्रमिक को विपक्षी द्वारा कभी भी स्थायी रूप से ड्राईवर के पद पर नियुक्त नहीं किया गया बल्कि जरूरत के वक्त ही उसे ड्राईवर के कार्य पर बुलाया जाता था। यह भी कहा गया है कि समझौता वार्ता के परिणामस्वरूप अर्वाड के अनुसरण में प्रार्थी को नियुक्ति प्रदान की गयी थी एवं समझौते की शर्तों के अनुसार कार्य करने के लिये प्रार्थी को निर्देष प्रदान किये गये तथा प्रार्थी ने अपने हस्तलिखित प्रार्थना–पत्र में प्रतिनिधि की उपस्थिति में समझौते की शर्तों को सहर्ष स्वीकार किया। प्रार्थी तथा विपक्षी विभाग के बीच समझौते की शर्तों के अनुसार प्रार्थी को एक मजदूर के पद पर कार्य करना था जो नियमानुसार सही था। प्रार्थी को कभी भी स्थायी रूप से ड्राईवर के पद पर नियुक्त नहीं किया गया बल्कि जरूरत के वक्त ही ड्राईवर के कार्य के लिए बुलाया जाता था।

समझौते के अनुसार प्रार्थी को मजदूर के पद पर नियुक्त किया गया था। समझौते की शर्तों को स्वीकार करने के बावजूद अनुचित लाभ प्राप्त करने के लिए न्यायाधिकरण के समक्ष प्रार्थी ने मामला प्रस्तुत किया है जो निरस्त होने योग्य है।

10. यह भी कहा गया है कि प्रार्थी को कभी भी ड्राईवर के पद पर नियुक्त नहीं किया गया और एक मजदूर के पद पर ही कार्य करवाया जा रहा है। विपक्ष द्वारा समझौते की शर्तों का पूर्णतः पालन करते हुए नियुक्ति दी गई है अतः प्रार्थी का दावा खारिज किया जाए।

11. प्रार्थी की तरफ से स्टेटमेन्ट ऑफ क्लेम के समर्थन में प्रदर्ष डब्ल्यू–1 लगायत डब्ल्यू–13 अभिलेख प्रस्तुत है। श्री महेन्द्र पाल सिंह की शपथ–पत्र साक्ष्य में प्रस्तुत की गयी है जिनकी प्रतिपरीक्षा विपक्षी द्वारा की गयी है। विपक्षीगण की तरफ से सूची से आर–1 लगायत आर–3 अभिलेखीय साक्ष्य प्रस्तुत है। श्री शोभाराम पुत्र श्री गोदाराम तथा श्री डी. के. कुन्डारिया पुत्र श्री प्रेमकुमार कुन्डारिया, सिनियर सब डिवीजनल इन्जीनियर की शपथ–पत्र साक्ष्य में प्रस्तुत की गयी है जिनकी प्रतिपरीक्षा प्रार्थी पक्ष द्वारा की गयी है।

12. मैंने प्रार्थी के विद्वान प्रतिनिधि तथा विपक्षीगण की तरफ से उनके विद्वान अधिवक्ता की बहस सुनी तथा पत्रावली का सम्यक अवलोकन किया। विपक्षी की तरफ से लिखित बहस भी प्रस्तुत की गयी है जो पत्रावली पर उपलब्ध हैं।

13. प्रार्थी के विद्वान प्रतिनिधि की तरफ से यह बहस की गयी है कि प्रार्थी से ड्राईवर का कार्य लिया जाता रहा है अतः न्यायाधिकरण द्वारा उसके चालक होने के सम्बन्ध में घोषणा करते हुए उसे याचित अनुतोष प्रदान किया जाए। इसके विरूद्ध विपक्षी के विद्वान अधिवक्ता की तरफ से यह बहस भी गयी है कि प्रार्थी को कभी भी चालक के रूप में नियुक्ति नहीं दी गई और उससे श्रमिक का कार्य करवाया जाता था और विभाग के नियमित नियुक्त ड्राईवर के अवकाष पर होने पर प्रार्थी से ड्राईवर का कार्य भी करवाया जाता था। यह बहस भी की गयी है कि विभाग में चालक का अलग पद है जिसमें चालक अलग नियुक्त है। विपक्षी विभाग द्वारा नियम से परे हटकर प्रार्थी को श्रमिक रहते हुए चालक की नियुक्ति नहीं दी जा सकती। यह बहस भी की गयी है कि समझौते की शर्तों के अनुसार प्रार्थी को मजदूर के पद पर नियुक्त किया गया था और उसे एक मजदूर का कार्य करवाया जा रहा है और उसने सहर्ष अवार्ड के अनुसार नियुक्ति आदेष को स्वीकार करते हुए श्रमिक के पद पर कार्यभार ग्रहण किया। यह बहस भी की गयी है कि सुलह की शर्त में प्रार्थी को चालक के पद पर नियुक्त करने की कोई बात नहीं लिखी है।

14. पक्षकारों द्वारा प्रस्तुत की गयी उक्त बहस के सम्बन्ध में उनकी तरफ से प्रस्तुत साक्ष्य की समीक्षा इस स्तर पर की जानी आवष्यक है।

15. पक्षकारों के साक्ष्य की समीक्षा से पूर्व मैं सुलह की शर्तों का उल्लेख करना इस स्तर पर आवष्यक समझता हूँ जो प्रदर्ष डब्ल्यू–3 के अनुसार निम्नवत् है : ––

समक्ष माननीय औद्योगिक न्यायाधिकरण (केन्द्रीय), जयपुर।

केस नं. सी. आई. टी. 22/96

महेन्द्रपाल सिंह बनाम एस.टी.ओ. (डी.) जयपुर।

महोदय जी,

इस प्रकरण में दोनों पक्ष लोक अदालत की भावना से निम्नलिखित शर्तों पर समझौता करने के लिए सहमत हैं।

1. नियोजक पक्ष श्रमिक श्री महेन्द्र पाल सिंह को विभागीय नियमानुसार (नई नियुक्ति) के समय जो विभाग के नियम जैसे आयु प्रमाण–पत्र, शैक्षणिक योग्यता, अन्य नियम जिनकी शर्तों को पूरा करता है। इन शर्तों के अनुसार वांछित योग्यता होने पर लेने को तैयार है। नियुक्ति हेतु आयु प्रथम नियुक्ति के समय जो थी उसी आधार पर मानते हुए नियुक्ति दी जावेगी।

2. श्रमिक सेवामुक्ति से समझौते की तारीख तक की अवधि का कोई वेतन क्लेम नहीं करेगा।

3. श्रमिक को विभागीय नियमानुसार नियुक्ति दी जायेगी, लेकिन उसे सेवामुक्ति अवधि की वरिष्ठता का लाभ नहीं दिया जायेगा। इस अवधि को नियुक्ति दिये जाने हेतु कण्डोन माना जायेगा।

अतः निवेदन है कि समझौते के अनुसार अवार्ड पारित करने की कृपा करें।

जयपुर :

दिनांक : 28.7.97

श्रमिक पक्ष : महेन्द्र पाल सिंह (हस्ताक्षर पठनीय)

श्रमिक प्रतिनिधिः ऋषभ जैन (हस्ताक्षर पठनीय)

28/7/97

नियोजक पक्ष

(हस्ताक्षर अपठनीय)

नियोजक प्रतिनिधि

16. जिस विवाद में उक्त समझौता हुआ था वह विवाद श्रम मन्त्रालय के आदेष दिनांक 24.04.96 के अनुसार निम्नवत् है जिसकी फोटोप्रति पत्रावली पर प्रदर्ष डब्ल्यू–2 है : –

"Whether the action of the management of S.D.O. (T) Alwar in terminating the services of Shri Mahendra Pal Singh w.e.f. 3.4.1988 and again on 4.4.1991 is proper, legal and justified ? if not, to what relief the workman is entitled to ?"

17. समझौता की इबारत तथा दिनांक 24.4.96 को प्रेषित विवाद को देखने से ऐसा कोई निष्कर्ष नहीं निकलता कि प्रार्थी पूर्व में

चालक के पद पर नियुक्त था और उसे चालक के पद से सेवामुक्त कर दिया गया था। याचिका के प्रस्तर 4 में प्रार्थी ने यह उल्लेखनीय किया है कि वह प्रथम नियुक्ति में चालक के पद पर नियुक्त था और समझौता अवार्ड के पष्चात् उसे चालक के पद पर ही नियुक्त होना चाहिए था। अतः यह तथ्य सिद्ध करने का भार प्रार्थी पर है कि वह समझौता से सम्बन्धित विवाद के मामले में अपनी नियुक्ति के समय ड्राईवर के पद पर प्रारम्भिक रूप में नियुक्त था और समझौता के बाद उसे ड्राईवर पद पर ही नयी नियुक्ति पानी थी।

18. इस मामले के निराकरण में निस्तारण हेतु प्रमुख बिन्दु यह है कि क्या प्रार्थी महेन्द्र पाल सिंह को याचित घोषणात्मक अनुतोष स्वीकार किये जाने योग्य है कि उसे दिनांक 30.3.98 से समस्त वेतन व भत्तों सहित नियमित नियुक्त चालक घोषित किया जाए। इस सम्बन्ध में केन्द्रीय सरकार द्वारा निराकरण हेतु प्रस्तुत विवाद भी घोषणात्मक अनुतोष के अनुरूप ही यह है कि ''क्या प्रार्थी द्वारा अवार्ड दिनांकित 28.7.97 की शर्तों के अनुसार श्रमिक महेन्द्र पाल सिंह को ड्राईवर के पद पर नियुक्त करने की मांग विधिक एवं न्यायानुमत है।

19. समझौता दिनांकित 28.7.97 जिसके आधार पर अवार्ड आधारित है उसके सम्यक एवं सूक्ष्म अवलोकन से यह स्पष्ट है कि पक्षकारों के बीच इस बात कि सहमती है कि प्रार्थी को विपक्ष द्वारा एक नई नियुक्ति प्रदान की जावेगी जिसमें प्रार्थी अपनी पूर्व सेवा के सम्बन्ध में वरिष्ठता की कोई मांग नहीं करेगा। यह नियुक्ति विषुद्ध रूप से नई मानी जावेगी। प्रार्थी को नियुक्ति किस पद पर दी जायेगी इसका उल्लेख समझौते की शर्तों में नहीं किया गया है। यह भी उल्लेख है कि इस नियुक्ति में विभाग के नियमानुसार प्रार्थी को शैक्षिक योग्यता पूरा करना होगा। प्रथम नियुक्ति के समय प्रार्थी की जो उम्र थी उसी उम्र को ही आधार मानकर प्रार्थी को नई नियुक्ति दी जावेगी। उक्त समझौते की शर्तों में यह तथ्य भी निर्विवाद है कि शर्तों में इस बात का कोई उल्लेख नहीं है की प्रार्थी की नई नियुक्ति विपक्ष द्वारा किस पद पर की जायेगी। यह तथ्य निर्विवाद है कि समझौते की शर्तों के अनुसार प्रार्थी की नियुक्ति दिनांक 30.3.98 को प्रदान की गई और यह नियुक्ति उसे मजदूर के पद पर दी गई। अपनी प्रतिपरीक्षा में भी प्रार्थी ने स्वीकार किया है कि उसे दिनांक 30.3.98 को मजदूर के पद पर नियमित किया गया और उसे मजदूर की नियमित वेतन श्रृंखला प्रदान की जा रही है और इसके अतिरिक्त अन्य देय लाभ भी प्राप्त हो रहे हैं। वादी ने यह भी स्वीकार किया है कि समझौता दिनांकित 28.7.97 पर उसके हस्ताक्षर है और समझौते को पढ़ने के बाद उसने उस पर हस्ताक्षर किये थे। प्रार्थी ने प्रतिपरीक्षा में समझौता दिनांकित 28.7.97 के सम्बन्ध में यह भी स्वीकार किया है कि समझौते में इस बात का कोई स्पष्ट उल्लेख नहीं है की उसे ड्राईवर के पद पर नियुक्ति दी जायेगी। साक्षी ने नई नियुक्ति मजदूर के पद पर दिये जाने के सम्बन्ध में यह उल्लेख किया है कि जो नई नियुक्ति उसे दी गई थी उसे स्वीकार किया था और समझौता पर आधारित अवार्ड दिनांकित 28.7.97 को उसने किसी न्यायालय में चुनौती नहीं दी थी। साक्ष्य में प्रार्थी ने यह भी स्वीकार किया है कि यह सही है कि समझौते में यह बात अंकित नहीं है कि उसे ड्राईवर के पद पर नियुक्ति दी जाए, अतः उक्त आषय के साक्ष्य में कथन के बाद याचिका में प्रार्थी के यह कहने का कोई अर्थ नहीं रह जाता कि समझौता अवार्ड के बाद उसे चालक के पद पर ही नयी नियुक्ति मिलनी चाहिए थी क्योंकि ऐसा होना होता तो इसका उल्लेख स्पष्ट रूप में समझौते में होता। जो नियुक्ति उसे दी गयी उसे उसने स्वीकार भी किया है तथा साक्ष्य में भी इस तथ्य को माना है कि उसे मजदूर के पद पर नयी नियुक्ति स्वीकार की तथा किसी न्यायालय में उसने अवार्ड को चुनौती नहीं दी। ऐसी स्थिति में ड्राईवर पद की माँग का आधार नहीं बनता है और न ही अवाई में ऐसा कोई संकेत है।

20. प्रार्थी की साक्ष्य की प्रतिपरीक्षा से यह तथ्य भी जाहिर है कि अवार्ड दिनांकित 28.7.97 जिसके आधार पर प्रार्थी को मजदूर के पद पर नई नियुक्ति दी गई उस अवार्ड के पारित होने के बाद विभाग द्वारा ड्राईवर के पद पर नियुक्ति हेतु विज्ञप्ति निकाली गई थी लेकिन प्रार्थी ने स्वीकार किया है कि उस विज्ञप्ति के सम्बन्ध में उसके द्वारा ड्राईवर के पद पर नियुक्ति हेतु कोई आवेदन नहीं भरा गया था। विज्ञप्ति कब निकाली गई इस सम्बन्ध में साक्षी ने कहा है कि उसे ध्यान नहीं है। प्रार्थी के स्वयं के साक्ष्य से यह स्पष्ट है कि जहां चालक के पद पर विभाग में नियुक्ति हेतु उसको अवसर उपलब्ध थे उसका लाभ उसके द्वारा नहीं उठाया गया।

21. प्रार्थी के विद्वान अधिवक्ता की तरफ से यह बहस की गयी है कि नई नियुक्ति दिनांकित 30.3.98 के बाद से नियमित तौर पर प्रार्थी वाहन चालक के रूप में ही विभाग में कार्य कर रहा है अतः वाहन चालक होने के सम्बन्ध में उसे घोषणात्मक अनुतोष प्रदान होनी चाहिए, इस सम्बन्ध में प्रदर्ष डब्ल्यू–7 का उल्लेख बहस के दौरान किया गया। प्रदर्ष डब्ल्यू–7 के अवलोकन से यह जाहिर है कि मण्ड़ल अभियन्ता, प्रषासन को विभाग की तरफ से पत्र लिखा गया है जिसमें यह कहा गया है कि "Daily Rated"श्र मजदूर श्री महेन्द्र पाल सिंह की ड्राईवर के पद पर नियुक्ति करने के लिये श्री महेन्द्र पाल सिंह की आवेदन अग्रिम कार्यवाही हेतु अग्रसारित की जा रही है। इस पत्र में यह कहा गया है कि महेन्द्र पाल सिंह D.R.M. ड्राईवर के पद पर आवेदन किया है और वह दिनांक 30.3.98 से दैनिक मजदूर के रूप में कार्य कर रहे है और दिनांक 30.3.98 से ही विभागीय वाहन RJ-02/1386 चला रहे हैं और इनका कार्य सन्तोषजनक है यह पत्र D.E. Installation, Alwar द्वारा भेजा गया है। प्रदर्ष डब्ल्यू 8 से यह जाहिर है कि विभाग को विभिन्न वाहनों के साथ विभाग में कार्यरत चालकों को सम्बद्ध किया गया है जिसमें महेन्द्र पाल सिंह और श्री मनोहर लाल सैनी R.M. को भी दो अलग–अलग वाहनों से सम्बद्ध किया गया है। प्रदर्ष डब्ल्यू–8 दिनांकित 30.4.98 है। इसी प्रकार प्रदर्ष डब्ल्यू–9 दिनांकित 03.11.98 है जिसमें विभिन्न वाहनों पर अलग–अलग चालक दर्षाये गये हैं जिसमें महेन्द्र पाल भी है। प्रदर्ष डब्ल्यू–10 दिनांकित 20.6.2010 भी अलग–अलग वाहनों

पर अलग–अलग चालकों को सम्बद्ध करने से सम्बन्धित है जिसमें महेन्द्र पाल T.S.M. के पद पर कार्यरत दर्षित है और श्री विश्राम मीना ''नियमित मजदूर'' के पद पर कार्यरत दर्षित है। प्रदर्ष डब्ल्यू–5 से यह प्रगट है कि नियमित मजदूर श्री महेन्द्र पाल सिंह को स्थायी तौर पर सेवा में रख लिया गया है और प्रदर्ष डब्ल्यू–6 से यह जाहिर है कि नियमित मजदूर के रूप में महेन्द्र पाल सिंह का स्थायीकरण दिनांक 21.10.2002 से किया गया है। उक्त अभिलेखीय स्थिति से यह स्पष्ट है कि श्री महेन्द्र पाल सिंह नियमित मजदूर के पद पर नियुक्त थे जिससे वाहन चालक का कार्य लिया जाता रहा है और श्री शोभाराम सिनियर सब डिविजनल ऑफिसर ने अपनी साक्ष्य के रूप में प्रस्तुत शपथ–पत्र में कहा है कि चालक के पद पर श्रमिक को कभी भी स्थायीरूप से नियुक्त नहीं किया गया और जरूरत के वक्त ही ड्राईवर के कार्य के लिये बुलाया जाता था। महेन्द्र पाल सिंह के नाम के समक्ष प्रदर्ष डब्ल्यू–8, प्रदर्ष डब्ल्यू–9 और प्रदर्ष डब्ल्यू–10 में आवंटित वाहनों में उनका पद ''नियमित मजदूर'' एवं T.S.M. (Temporary Status Mazoor) के रूप में दर्षाया गया है। प्रदर्ष डब्ल्यू–7 के अवलोकन से भी यह जाहिर है कि प्रार्थी मजदूर के रूप में नियुक्त एवं कार्यरत रहा है तथा उसे निर्दिष्ट वाहन से सम्बद्ध किया गया है। श्री शोभाराम सिनियर सब डिविजनल ऑफिसर ने ई.डब्ल्यू 7 को देखकर प्रतिपरीक्षा 2 में यह उल्लेख किया है कि प्रार्थी दैनिक मजदूर के रूप में ही कार्य कर रहा था न कि चालक के रूप में और वाहन के साथ प्रार्थी की सम्बद्धता स्वीकार किया है। साक्षी ने यह भी कहा है कि प्रार्थी को दिनांकित 28.7.97 के अवार्ड के आधार पर मजदूर के रूप में रखने के लिये आदेष दिया गया था और यह आदेष पत्रावली पर नहीं है लेकिन 2004 में महेन्द्र पाल सिंह प्रार्थी को जो कन्फर्मेषन किया गया है वह पिछले आधार पर ही किया गया है जो दिनांक 2.11.2004 के आदेष पर आधारित है। साक्षी ने यह कहा है कि प्रार्थी को मजदूर के पद पर लगाये जाने से सम्बन्धित आदेष पत्रावली पर उपलब्ध नहीं है लेकिन उसे मजदूर के पद पर ही लगाया गया था। प्रदर्ष डब्ल्यू–5 के आधार पर साक्षी पृष्ठ 3 पर प्रतिपरीक्षा में कहा है कि यह आदेष रेग्यूलर मजदूर से सम्बन्धित है। उल्लेखनीय है कि प्रदर्ष डब्ल्यू–5 के आधार पर प्रार्थी को मजदूर के पद पर स्थायी रूप से सेवा में समायोजित किया गया है। चालक के कार्य तथा मजदूर के रूप में कार्य करने के सम्बन्ध में पृष्ठ 4 पर प्रतिपरीक्षा में साक्षी ने यह उल्लेख किया है कि प्रदर्ष डब्ल्यू–5 दस्तावेज यह स्पष्ट करता है कि प्रार्थी नियमित मजदूर के रूप में कार्यरत था और उसी पद पर मजदूर के रूप में उसका स्थायी समायोजन हो रहा है। श्री डी. के. कुन्डारिया ने प्रतिपरीक्षा में कहा है कि अवार्ड दिनांकित 28.7.97 के बाद प्रार्थी को सेवा में लिये जाने के सम्बन्ध में आदेष पत्रावली पर नहीं है।

22. उभयपक्ष द्वारा प्रस्तुत प्रलेखीय एवं मौखिक साक्ष्य की उक्त व्याख्या से यह स्पष्ट है कि अवार्ड दिनांकित 28.7.97 के बाद प्रार्थी महेन्द्र पाल सिंह को मजदूर के रूप में नियुक्त किया गया यद्यपि इस सम्बन्ध में कोई नियुक्ति–पत्र पत्रावली पर उपलब्ध नहीं है लेकिन साक्षी श्री महेन्द्र पाल सिंह ने स्वीकार किया है कि उसे दिनांक 30.3.98 को नियमित कर दिया गया। यह तथ्य भी स्पष्ट है कि प्रार्थी से नई नियुक्ति के बाद वाहन चालक का कार्य करवाया जाता था जिसके सम्बन्ध में शपथ–पत्र में विपक्षीगण ने कहा है कि नियुक्त चालक के अवकाष पर होने पर श्रमिक से ड्राईवर का कार्य करवाया जाता था लेकिन यह बात सही नहीं है कि नियमित चालक के अवकाष पर होने पर ही महेन्द्र पाल सिंह से वाहन चालक का कार्य लिया जाता था क्योंकि कई अभिलेखों से यह स्पष्ट है कि महेन्द्र पाल सिंह को विभिन्न समयों पर अलग–अलग वाहन से सम्बद्ध किया गया है। यह भी स्पष्ट है कि प्रार्थी यह तथ्य सिद्ध करने में असफल है कि समझौता पर आधारित अवार्ड के पूर्व वह विपक्ष द्वारा चालक के पद पर नियुक्त किया गया था।

23 अब महत्वपूर्ण प्रष्न यह है कि मजदूर के पद पर नियुक्त रहते हुए प्रार्थी से आवष्यकतानुसार वाहन चालक का कार्य लिये जाने के कारण क्या न्यायाधिकरण यह घोषणात्मक आदेष पारित कर सकती है कि प्रार्थी विपक्षी के अधीन एक नियमित चालक है और चालक पद से जुडे समस्त लाभ पाने का हकदार है ? यह तथ्य भी निर्विवाद है तथा प्रार्थी ने स्वंय स्वीकार किया है कि अवार्ड दिनांकित 28.7.97 के बाद चालक की भर्ती निकाली गयी थी लेकिन उस विज्ञप्ति के सम्बन्ध में उसके द्वारा ड्राईवर के पद के लिये आवेदन नहीं भरा गया था। उल्लेखनीय है कि वाहन चालक का पद मजदूर से प्रोन्नत का पद नहीं है अतः यह स्पष्ट है कि चयन प्रक्रिया में भाग लिये बिना और उसमें सफल हुए बिना प्रार्थी को चालक का पद प्रदान नहीं किया जा सकता। नियुक्तियों के सम्बन्ध में यह सुस्थापित विधिक स्थिति है कि किसी पद पर नियुक्ति के लिये चयन की विधिक प्रक्रिया अपनाये बिना कोई विधि मान्य नियुक्ति नहीं की जा सकती, तदनुसार मैं इस निष्कर्ष पर हूँ कि प्रार्थी महेन्द्र पाल सिंह को नियमित चालक होने के सम्बन्ध में घोषणात्मक आदेष दिये जाने का अनुतोष प्रदान नहीं किया जा सकता क्योंकि ऐसा करना भारतीय संविधान में नियुक्तियों के सम्बन्ध में प्रदत्त अवसर की समानता की व्यवस्था का उल्लंघन होगा। यहीं पर यह बात भी विषेष रूप से उल्लेखनीय है कि प्रार्थी पक्ष द्वारा विभाग में चालक का कोई पद रिक्त नहीं दिखाया गया है। इस सम्बन्ध में माननीय सर्वोच्च न्यायालय द्वारा (2008) 2 एस.सी.सी पृष्ठ –552, चन्द्र शेखर आजाद कृषि एवं प्रौद्योगिकी विष्वविद्यालय – अपीलार्थी बनाम यूनाइटेड़ ट्रेड्स कांग्रेस और अन्य– प्रत्यर्थीगण में दी गई विधि व्यवस्था अनुकरणीय है।

24. सी.एस. आजाद कृषि एवं प्रौद्योगिकी विष्वविद्यालय बनाम यूनाइटेड़ ट्रेड कांग्रेस के मामले में प्रत्यर्थी दो दिनाँक 01.07.1980 को रूपये 40 दैनिक वेतन भोगी के रूप में विष्वविद्यालय में नियुक्त हुआ था जिसने चतुर्थ श्रेणी कर्मचारी के रूप में 31.10.1991 तक लैब असिस्टेंट–कम–अटैन्डेन्ट के रूप में काम किया परन्तु 1.11. 1991 से उससे सहायक क्लर्क का काम लिया जाने लगा। प्रत्यर्थी, एक ट्रेड यूनियन ने प्रत्यर्थी दो की तरफ से औद्योगिक विवाद

उठाया कि कर्मचारी की सेवायें विष्वविद्यालय द्वारा नियमित नहीं की गयी। औद्योगिक न्यायाधिकरण के समक्ष निर्णयार्थ यह प्रष्न था कि ''क्या विष्वविद्यालय ने कर्मचारी कल्याण सिंह (विपक्षी दो) को जो क्लर्क रूप में कार्यरत है, स्थायी कर्मचारी घोषित न कर अवैधानिकता कारित की है यदि हाँ तो क्या कर्मचारी द्वारा याचित अनुतोष अधिकारिक है एवं किस तारीख से एवं किस आधार पर ?''

25. औद्योगिक न्यायाधिकरण के विद्वान पीठासीन अधिकारी ने विवाद को प्रत्यर्थी दो के पक्ष में निर्णित कर निर्णय की तिथि 30.5.1998 से कर्मचारी को स्थायी घोषित करने तथा अनुगामी आर्थिक लाभ प्रदान करने के लिए निर्देषित किया।

26. न्यायाधिकरण के निर्णय के पूर्व माननीय उच्च न्यायालय ने कुछ अन्य कर्मचारियों तथा विष्वविद्यालय के बीच विवाद से सम्बन्धित एक रिट याचिका कर्मचारियों के पक्ष में विष्वविद्यालय के विद्वान अधिवक्ता की तरफ से प्रदत्त कुछ रियायत के आधार पर निर्णित की थी। न्यायाधिकरण ने जिन आधारों पर अपने समक्ष लम्बित उक्त विवाद निर्णित किया उसमें माननीय उच्च न्यायालय द्वारा निर्णित उक्त रिट याचिका का निष्कर्ष भी आधार था।

27- U;k;kf/kdj.k ds fu.kZ; ds fo:) izLrqr flfoy esa rkZ fjV ;kfpdk ekuuh; bykgkdkn mPp U;k;ky; }kjk fuLrkfjr dh x;h Aekuh; lokZPp U;k;ky; ds fu.kZ; ds fuEu izLrkj kaa esa ;g mYys[k gS]

"11. The University statute does not provide for appointment on daily wages or on an ad hoc basis. Respondent 2 in his written statement filed before the

Industrial Court did not make any averment that he had been appointed in terms of the provisions of the statute or prior thereto any advertisement therefore was made. According to him, he being a hard working, honest, efficient and eligible employee, was "entrusted" with the work of a clerk from 1-11-1991. In his written statement, it was averred:

"5. That though the worker was working against a permanent vacant post as a clerk in a permanent manner, however, the employer is not giving him the actual scale of pay and other allowances and benefits as that of a permanent clerk. However, he is still considered as a daily wager in spite of having worked since last 14 years continuously, which is illegal and wrong."

"12. A feeble attempt, however, was made by the learned counsel appearing on behalf of Respondent 2 to state that he had been appointed against a permanent vacancy. In his written statement, he did not raise any such contention. It does not also appear from the records that any offer of appointment was given to him. It is inconceivable that an employee appointed on a regular basis would not be given an offer of appointment or shall not be placed on a scale of pay. We, therefore, have no hesitation in proceeding on the premise that Respondent 2 was appointed on daily wages. The Industrial Court in passing the impugned award proceeded on the premise that Respondent 2 had been working for more than 240 days continuously from the date of his engagement. It is now trite that the same by itself does not confer any right upon a workman to be regularized in service. Working for more than 240 days in a year was relevant only for the purpose of application of Section 6-N of the U.P. Industrial Disputes Act, 1947 providing for conditions precedent to retrench the workmen. In does not speak of acquisition of a right by the workman to be regularized in service."

28- ekuuh; lokZPp U;k;ky; ds le{k vihy esa deZpkjh fd rjQ ls ;g crk;k x;k fd prqFkZ Js.kh dehZ ds :Ik esa deZdkj us ySc vflLVSUV ds LFkk;h fjDr in ij rFkk r``rh; Js.kh deZpkjh ds :Ik esa DyDZ ds LFkk;h in ij yEch vof/k rd lsok dh gS] bl izdkj vkS|ksfxd U;k;kf/kdj.k }kjk ikfjr fu.kZ; vkns'k U;k;kf/kdj.k dh vf/kdkfjrk ds vUrxZr gSA izR;FkhZ dh rjQ ls ;g Hkh crk;k x;k fd ekuuh; mPp U;k;ky; ds vkns'k ls izR;FkhZ ls dfFkr deZpkjh dh fu;fer fd;s tk pqds Fks vr% izR;FkhZ nks fu;fer dj.k dk gdnkj FkkA fu.kZ; ds fo:) vihykFkhZ dh rjQ ls ;g crk;k x;k fd fu;qfDr LVSP;wVjh ¼statutory½ fu;eksa ds fo:) Fkh vr% vf/kdj.k }kjk fu;fer dj.k dk funsZ'k ugha fn;k tkuk pkfg, Fkk rFkk vf/kdj.k ?kksf"k.kk Red O;kns'k dh fMkh ikfjr ugha dj ldrk A ekuuh; lokZPp U;k;ky; us vihy Lohdkj dh vkSj ;g vo/kkfjr fd;k]**

"17. The Industrial Court, therefore, in our opinion, committed a serious error in passing the impugned award. The High Court unfortunately did not pose unto itself a right question. It referred to a large number of decisions. Although most of the decisions referred to by the High Court should have been applied for upholding the contention of the appellant herein, without any deliberation thereupon, the learned Judge has proceeded to determine the question posed before it on a wholly wrong premise. As noticed hereinbefore, it relied upon Mahendra L. Jain which in no manner assists Respondent 2.

18. What was necessary to be considered was the nature of work undertaken by the University. It undertakes projects. For the said purpose, it may have to employ a large number of persons. Their services had to be temporary in nature. Even for that the provisions of Articles 14 and 16 are required to be complied with. In the event, the constitutional and statutory requirements are not complied with, the contract of employment would be rendered illegal.

19. Services of Respondent 2 were not terminated. He has been continuing to serve the University. We have noticed hereinbefore that in a writ petition filed by other

employees on a concession made by the counsel for the University, a purported scheme dated 24-4-2000 has been formulated. Dr. Padia in that view of the matter stated before us that of Respondent 2 comes within the purview of the said scheme, his services shall be regularized when his turn comes therefor.

20. We place on record the aforementioned statement made by Dr. Padia that as and when Respondent 2 becomes entitled to be considered for being absorbed in the services of the University pursuant to the said scheme, his case may be considered. If his turn for consideration for regularization has already come, a decision thereupon shall be taken as expeditiously as possible.

21. The impugned judgment is set aside. The appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of this case, there shall be no order as to costs."

29- ek/;fed f'k{kk ifj"kn~ ds fo}ku vf/koDrk us ekuuh; loksZPp U;k;ky; ds le{k LosPN;k ij ;g tkfgj fd;k fd vihykFkhZ ekuuh; mPp U;k;ky; ds iwoZ esa ikfjr fu.kZ; ds vuqlkj tc fo'ofo|ky; dh lsok esa vkesfyr djus ds fy, gdnkj gks tkrk gS rc mlds ekeys ij fopkj fd;k tk ldsxkA mä ogl dks fu.kZ; dk fgLlk cukrs gq, ekuuh; lokZsPp U;k;ky; us vihy [kkfjt dhA

30- ekuuh; lokZsPp U;k;ky; }kjk mDr n`"VkUr esa nh xbZ fof/k O;oLFkk ls ;g Li"V gS fd izkFkhZ egsUnz iky flag dks mlds ekeys esa dksbZ ?kks"k.kkRed vuqrks"k U;k;kf/kdj.k }kjk iznku ugha fd;k tk ldrkA

31- lVsVesUV vkWQ Dyse ds izLrj 3 esa izkFkhZ us ;g mYys[k fd;k gS fd mlls dfu"B deZpkjh Jh gqdqepUn lSuh vkSj pqUuhyky dks pkyd ds in ij fu;qDr ns nh xbZ vkSj mUgsa fu;fer dj fn;k x;kA bl lEcU/k esa mYys[kuh; gS fd lVsVesUV vkWQ Dyse esa Jh gqdqepUn lSuh vkSj pqUuhyky dh foi{kh ds ;gka fu;qfDr dh izkjfEHkd frfFk ugha nh xbZ gS ftlls ;g tkudkjh gks lds fd egsUnz iky flag mlls ofj"B deZpkjh gSA egsUnz iky flag dh lk{; esa izLrqr 'kiFk&i= esa Hkh gqdqepUn lSuh o pqUuhyky dh lsok esa vkus dh frfFk dk mYys[k ugha gS ysfdu gqdqepUn lSuh dh fu;qfDr vkns'k dk mYys[k gS tks izn'kZ MCY;w&13 gSA izn'kZ MCY;w&13 ls dsoy ;g tkfgj gS fd Jh gqde pUn fnukad 26-2-97 dks M"kbZoj ds in ij fu;qDr gq, gSaA bl vfHkys[k ls ;g tkfgj ugha gS fd laLFkk esa og iwoZ ls fu;qDr jgk gS rFkk mldh fu;qfDr dh frfFk D;k gSA izn'kZ MCY;w&1 ds voyksdu ls ;g izdV gS fd pqUuh yky dh fu;qfDr 'ksM~;wYM dkLV dks"Vk ij vk/kkfjr crk;h x;h gS vr% pqUuh yky ds ekeys ls dksbZ enn ugha yh tk ldrh gSA ;gha ij ofj"Brk ds lEc) esa ;g dgk tk fo'ks"k :Ik ls mYys[kuh;

gS fd le>kSrs ds vk/kkj ij Jh egsUnz iky flag }kjk fnukad 30-3-98 dks viuh fu;qfDr dks u;h fu;qfDr ds :Ik esa Lohdkj djus ds dkj.k iwoZ ds deZpkfj;ksa ls rqyuk dk vf/kdkj mlds ekeys esa 'ks"k ugha jg tkrk gSA le>kSrk ij vk/kkfjr vkns'k ds dkj.k Hkh pqUuhyky vkSj gqdqepUn dh fu;qfDr dks iq=mRBkus dk vk/kkj 'ks"k ugha jg tkrk gSA le>kSrs dh 'krZ esa Hkh izkFkhZ us ;g Lohdkj fd;k gS fd ofj"Brk ds lEcU/k esa og dksbZ ek¡x ugha djsxkA vr% mDr fLFkfr ds vk/kkj ij eSa bl fu"d"kZ ij gw¡ fd orZeku izdj.k esa pqUuhyky rFkk gqdqe pUn dh fu;qfDr ds ekeys dks mBkus dk fof/kd vf/kdkj izkFkhZ ds i{k esa 'ks"k ugha jg tkrk gSA

32- izkFkhZ }kjk fnukad 30-3-98 dks u;h fu;qfDr Lohdkj djus ds dkj.k iq=mls pkyd ds in ij fu;qDr dj fn;s tkus dh ek¡x yxHkx vkB lky ls Hkh T;knk le; dk bruk foyEc ls mBk;k x;k gS fd vdsys foyEc ds vk/kkj ij izkFkhZ dk ekeyk vLohdkj fd;s tkus ;ksX; gS D;ksafd bls Lohdkj djus ij dbZ vU; fookn mRiUu gksaxs vFkZkr~ vkns'kksa esa fofHkUu dkj.kksa ds lkFk pkyd ds in ij egsUnz iky flag ds lkFk vU; etnwjksa ds uke Hkh n'kkZ;s x;s gSa tks pkyd ds in ij ugha jgdj Hkh dkgu ls lEc) n'kkZ;s x;s gSaA izkFkhZ dh u;h fu;qfDr o"kZ 1998 ls ysdj jsQjsUl ds le; 2007 dh vof/k ds chp tks pkyd fu;fer :Ik ls fu;qDr gq, gksaxs mu ds gd Hkh ,slk vuqrks"k iznku djus ls izHkkfor gksaxsA bl lEcU/k esa ekuuh; lokZsPp U;k;ky; }kjk ts-Vh- 1996 (7) ,l-lh- 181] lsUV~y cSad vkQ bf.M;k cuke ,l-lR;e ,oa vU; esa nh x;h fof/k O;oLFkk izklafxd gS ftlesa 1974 rFkk 1976 ds chp NVauh 'kqnk deZpkfj;ksa dh iqufuZ;kstu gsrq 1982 esa izLrqr ;kfpdk dks foyEc ds vk/kkj ij vuqrks"k iznku djus ds fy, vuqi;qDr djkj fn;k x;k vkSj ekuuh; lokZsPp U;k;ky; us ;g vo/kkfjr fd;k fd deZpkjh x.k yEcs foyEc ds dkj.k vuqrks"k ds gdnkj ugha gSaA

33- i{kdkjksa ds vfHkopuksa rFkk mlds leFkZu esa izLrr vfHkys[kh; ,oa ekSf[kd lk{; dh mDr foospuk ,oa fo'ys"k.k ds vk/kkj ij eSa bl fu"d"kZ ij gw¡ fd le>kSrk fnukafdr 28-7-97 dh 'krksZa ds vk/kkj ij Jh egsUnz iky flag dks pkyd ds in ij fu;qDr djus dh jktLFkku lkoZtfud {ks= deZpkjh la?k dh ek¡x fof/kd :i esa U;k;kuqer ugha gSA vr% nkosnkj fdlh vuqrks"k dks ikus dk gdnkj ugha gSA U;k;fu.kZ; ugsrq izsf"kr funsZ'k dk mRrj mDr izdkj fn;k tkrk gSA iapkV rn~uqlkj ikfjr fd;k tkrk gSA

34- iapkV dh izfrfyfi dsUnzh; ljdkj dks vkS|ksfxd fookn vf/kfu;e 1947 dh /kkjk 17¼1½ ds vUrxZr izdk'kukFkZ izsf"kr dh tk;A

Hkjr ik.Ms;] ihBklhu vf/kdkjh

नई दिल्ली, 30 जून, 2014

का.आ. 1914.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 83/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–12012/27/2007–आईआर(बी.–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th June, 2014

S.O. 1914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 83/2007) of the Cent. Govt. Indus.-cum-Labour Court-1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Punjab National Bank and their workman, received by the Central Government on 27/06/2014.

[No. L-12012/27/2007-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 83 of 2007. Reference No. L-12012/27/2007-IR(B-II) dated 24.09.2007 and corrigendum dated 03.01.2013.

Sh. Satish Kumar Kaundal,
VPO Muhal, Tehsil Dehra,
Distt. Kangra (HP), Kangra ...Workman

Versus

1. The Regional Manager,
   Punjab National Bank,
   Regional Office, Bank Square,
   Sector-17B, Chandigarh.
2. Vice President,
   PNB Housing Finance Ltd.,
   SCO No.84-85, Sector-8C,
   Chandigarh ...Respondents

Appearances :

For the Workman : Workman in person.

For the Management : None for the Respondents.

AWARD

Passed on 23.04.2014

Government of India Ministry of Labour vide notification No.L-12012/27/2007-IR(B-II)dated 24.09.2007 and corrigendum dated 03.01.2013 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the termination of Shri Satish Kumar Kaudal from the services w.e.f. 12.05.2005 by M/s Snack Services, a contractor of PNB Housing Finance (a subsidiary of Punjab National Bank) is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. The workman in claim statement submitted that he was employed with Respondent No.2 i.e. P.N.B. Housing Finance Ltd. (in short PNB HFL) at Chandigarh on 24.1.1992 and on 12.5.2005 his services is terminated arbitrarily though he has completed 14 years services without any break. The only plea taken by the respondent No.2 was that his services were not directly with them but he was engaged through M/s Snack Bar who used to supply the labour. It is further submitted by the workman that the above M/s Snack Bar was the canteen contractor at PNB, Sector-17-B, Main Office, at Chandigarh. It is further submitted by the workman that the above M/s Snack Bar has no license to supply the labour. It is further pleaded by the workman that it is settled law that if a person has no labour supply license, employment through him is illegal and should be treated the employee of the principle employer i.e. P.N.B. Housing Finance Ltd. It is further pleaded by the workman that he was recommended for regular services by the then Vice President on 15.10.93 and he was issued experience certificate on 6.4.1996 by Respondent No.2 and in reply to letter of the workman respondent No.2 that the workman was in the service of Punjab National Bank Housing Finance Ltd. since 24.1.92 but he was not given any regular service and his claim is further substantiated from the correspondence made by the workman to the respondents. It is further pleaded by the workman that the above respondent no.2 is fully owned subsidiary of Punjab National Bank and is a registered company under the Companies Act. It is also pleaded by the workman that during 1992 in Punjab National Bank i.e. respondent no.1, drivers were appointed on contract basis like the workman and they were regularized after 4/5 years but the workman was not given this benefit. It is also pleaded by the workman that before his relieving he had already completed service of more than 240 days in a calendar year and he is still ready to work with respondent No.2. He prayed for his reinstatement in service with full back wages.

3. Vide corrigendum no. No. L-12012/27/2007-IR (B-II) dated 3.1.2013, Vice President P.N.B. Housing,

Finance Ltd. S.C.O. No. 84-85 Sector -8-C, Chandigarh has been added party respondent no.2-A by the Ministry of Labour. Notices were issued to the parties i.e. workman and both the respondent no. 1 and respondent no. 2. From the record of the file it is revealed that earlier Sh. Ashok Kumar Sharma was representing respondent no.1 and none was appearing on behalf of respondent no.2. Lateron Sh. Negi was representing respondent no.1 i.e. P.N.B. Respondent No.2 i.e. Punjab National Bank filed written statement stating therein that PNB Housing Finance Ltd.is a separate legal entity. They have separate rules / regulation for appointing /engaging / employing of employees. The Regional Manager (Now Circle Head) Punjab National Bank, Sector-17-B Chandigarh has wrongly been made party in claim statement. In written statement has been mentioned that the workman had never been engaged /worked with the Punjab National Bank. It is also requested that name of Regional Manager (Circle Head) PunjabNational Bank Sector-17-B be deleted from the array of respondents.

4. Vice President P.N.B. Housing, Finance Ltd. S.C.O. No. 84-85 Sector -8-C, Chandigarh did not file written statement. Photo copy of General Power of Attorney has been filed authorizing Sh. Sanjai Kumar Singh S/o V.N.Singh as an attorney on behalf of the company. Sh. Sanjai Kumar Singh appeared in this court on behalf of respondent no.2 on two occasion but he also did not participate further in the proceedings. Ultimately the case was proceeded ex-party against the respondent No.2.

The workman also filed his affidavit almost on the same facts and circumstances as claimed by him in the claim statement. He also filed correspondence between contractor i.e. M/s Snack Services to the Vice President PNB Housing Finance Ltd. and also letter from Senior Vice President to the Chief PNB Housing Finance Ltd. for recommending his permanent posting with the respondent no.2 showing that workman was deputed by M/s Snack Services and he was maintaining the office very nicely for the last two years and his case may be considered sympathically. The workman also placed on record the experience certificate issued by Vice President PNB Housing Finance Ltd. showing the workman as deputed by M/s Snack Services in their office. The workman also placed on record some inter-see correspondence of respondent no.2. He also placed on record call letter received from Punjab National Bank for appearing for the post of clerk-cum-cashier.

5. I have heard the submissions made by the workman during arguments. The workman submitted that the above M/s Snack Services have no license to supply labour, therefore, the workman who worked continuously with respondent no.2 from the year 1992 to 12.5.2005. He also submitted that he had completed more than 240 days in each year and he is still ready to work with the respondent no.2. As the Labour Supply Contractor i.e. M/s Snack Services has no license to supply labour and in that eventuality, the principal employer i.e. respondent no.2 is liable and the workman become employee of respondent no.2 and as the management violated the provisions of I.D.Act 1947, therefore, the workman is entitled for reinstatement with respondent no.2 w.e.f. 12.05.2005 and also entitled for back wages also for the period from 12.5.2005 till date.

6. The workman placed annexure P-1 a letter from Prop. Snack Services addressed to Vice President PNB Housing Finance regarding working of Satish Kaundal (workman). It has been mentioned in this letter that Senior Vice President, PNB Housing Finance Chandigarh has asked for a one person for the job of peon-cum-record keeper in PNB Housing Finance Ltd.Chandigarh branch from Snack Services and the Snack Services provided one candidate Mr. Satish Kaundal (workman) who worked from 24.1.92 to 12.5.2005 regularly and there was no break period in this 14year of his job record. Snack Services letter also reveal that Snack Services had no labour licence and Mr. Satish Kaundal (workman) has not worked for Snack Services. Snack Services clearly mentioned in this letter that Snack Services is not labour supplier contractor and it is only a canteen contractor.

7. The letter dated 15.10.93 addressed to the Chief PNB Housing Finance Ltd. Head Office New Delhi by Senior Vice President of Respdt.No.2 stating therein that the workman Satish Kumar has been deputed by M/S Snack Services for maintenance of his office from 24.1.1992 and the application of workman was forwarded to the Head Office for permanent posting under subordinate staff. The Respdt. No.2 has also issued a certificate on 6.4.1996 stating therein that M/S Snack Services has provided Shri Satish Kumar (workman) as office maintainer in their office and the workman is maintaining their office since 24.1.1992.. The workman also drawn attention to the letter dated 17.12.1997 in which it is stated by Respdt. No.2 i.e. PNB Housing Finance Ltd. Chandigarh has entered into an agreement with M/S Snack Services on 11.9.1996 for cleaning and for upkeeping the premises and the workman was engaged by the contractor M/S Snack Service .

8. From all the above correspondence it revels that Satish Kumar Kaundal (workman) was provided to the office of PNB Housing Finance Ltd. Chandigarh on 24.1.1992 and he worked with the above Respondent No.2 i.e. PNB Housing Finance Ltd. Chandigarh up to 12.5.2005 when he was refused to work by the respondent No.2. It also reveals from the documents/correspondence mentioned above that M/S Snack Service has no labour supply licence and it was only a canteen contractor.

9. As discussed above, it is settled principle of law that if any contractor has no licence issued by the competent authority for supply of labour, then in that eventuality, the principal employer is liable for violation of

any provision of Industrial Dispute Act 1947. In the case in hand, the workman Satish Kaundal was provided by Snack Services to respondent no.2 i.e. PNB Housing Finance Ltd. It was the primary duty of the principle employer to make it certain that the so called contractor Snack Services have any valid license to supply labour. It is admitted by Snack Services in its letter that workman Satish Kaundal was provided to the respondent no.2 on 24.1.92 and he continued working with respondent no.2 upto 12.5.2005, continuously for 14 years without any break when his(Satish Kaundal workman) services were terminated without complying with the mandatory provisions of the I.D. Act 1947. Therefore, it is held that termination of workman is illegal in violation of the provisions of I.D Act 1947.

10. In view of the discussion in the earlier paras, the management i.e. respondent no.2 is directed to reinstate the workman in service with all consequential benefits. In the peculiar facts and circumstances of the case, the workman shall be paid 40% of the back wages by the management within one month from the publication of award.

11. The reference is answered accordingly. Central Govt. be informed. Soft as well as hard copy be sent to the Central Govt.for publication.

Chandigarh
23.04.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 30 जून, 2014

का.आ. 1915.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 17/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–12011/69/2012–आईआर(बी.–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th June, 2014

S.O. 1915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 27/06/2014.

[No. L-12011/69/2012 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D.17/2013

Reference No.L-12011/69/2012-(IR(B-II) dated: 30.1.2013

General Secretary
Bank of Baroda Karamchari Union
C/o Bank of Baroda, D-38-A,
Ashok Marg, Ahinsa Circle, C-Scheme,
Jaipur.

V/s.

1. General Manager
Bank of Baroda, Anand Bhawan,
S.C.Road, Jaipur.

2. General Manager
Bank of Baroda, Baroda Corporate Centre,
C-26, G Block, Bandra Kurla Complex,
Bandra (East), Mumbai.

Present :

For the Applicant union : None.

For the non-applicants : Sh. Rupin K. Kala, Advocate

AWARD

16.5.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> "Whether the demand of the union for payment of special pay to the computer operators on man-machine ratio 1:1 is fair, legal & justified. What relief they are entitled to?"

2. In pursuance of reference order, registered notices were sent to both the parties as per address given in reference order. Opposite party has been served with notice & their appearance is on record through Vakalatnama. First notice sent to the applicant did not returned back but acknowledgement attached with notice to applicant was received back without signature of the person who received the notice. In above fact & circumstance, order was passed on 31.3.2014 to reissue registered notice against the applicant for 5.5.2014. The registered notice sent to the applicant has not come back & acknowledgement attached to it has also not returned back. In above fact & circumstance, the service of notice was held sufficient against the applicant on 12.5.2014. It is pertinent to note that till 12.5.2014 statement of claim has not been filed by applicant whereas status of service of

registered notice indicates that addressee is in knowledge & receipt of the notice. It is also important to note that in reference order dated 30.1.2013 itself the applicant was directed by the Ministry to file statement of claim complete with relevant documents & list of witnesses in the tribunal within 15 days from the date of receipt of reference order forwarding copy of such statement of claim to opposite parties but in compliance of that order too applicant has failed to file any statement of claim. Under these circumstances, the reference order under adjudication cannot be adjudicated on merits, hence, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

3. Award as above.

4. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D.Act.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 30 जून, 2014

का.आ. 1916.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 34/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–12011/44/2013–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th June, 2014

S.O. 1916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 27/06/2014.

[No. L-12011/44/2013-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 34/2013

Reference No.L-12011/44/2013-IR(B-II) dated: 12.7.2013

Sh. Sunil Kumar
S/o Sh. Murari Lal
Vigyan Nagar, Vistar Yojana,
Ganesh Nagar, Kachi Basti,
Gali No.4, H.No.4-L 36,
Kota (Rajasthan)

V/s.

Branch Manager
Syndicate Bank
Ramganj Mandi Branch
Dist; Kota (Rajasthan).

Present:-

For the Applicant : Sh. Jugal Kishore Agrawal, Adv.
For the Non-applicant : Ex-Party

AWARD

Dated : 30.5.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> "Whether action of the management of Syndicate Bank, in terminating the service of Sri Sunil Kumar w.e.f. 19.05.2011 is just, and legal? What relief the workman is entitled to?"

2. The fact of the case in brief according to the statement of the claim is that the workman Sh. Sunil Kumar was appointed on 25.3.2009 in Syndicate Bank, Ramganj Mandi Branch, Kota against permanent post for permanent work according to law for which he had filled up the application form & was interviewed by the bank. It has been further alleged that there are number of agreements between the bank & the worker's Union of the bank according to which a workman after working continuously for 240 days, he is made regular & permanent. In order of above agreement like applicant other workmen engaged in other branches of the Syndicate Bank existing in the state of Rajasthan were made permanent after completion of one year of service, e.g. Porulal Meena in Sawai Madhopur Branch has been made permanent & in Sikar, Bundi, Jhalarapatan & Tonk Branches also workmen have been made permanent & applicant is jobless since his removal from service.

3. It has been further alleged that applicant requested the Branch Manager that more than one year has elapsed since he has started working hence he be made permanent. After the request of the workman a letter dated 6.12.2010 (Annex-1) was written by the then Branch Manager to A.G.M., Personal Department, Regional Office, Jaipur but instead of applicant being made permanent he was removed from the service illegally on 19.5.2011.

4. It has been further alleged that from date of appointment on 25.3.2009 till the date of removal on 19.5.2011 the workman has worked continuously without break except Sunday & public Holidays & payment for the same has been made to the applicant which means

that workman has worked continuously till the date of his illegal removal & further he has worked more than 240 days in every year. The applicant has worked with full dedication & honesty & there has been no complaint against the work of the applicant workman. The applicant's registration no. in Regional Employment Exchange, Kota is 4386/2008 & applicant is holding the eligibility for permanent employment in the bank. Applicant's educational qualification is secondary pass & he is also a scheduled caste (SC) person.

5. It has been further alleged that before removal from service he was not served with any notice neither he was assigned any reason. The applicant was employed on the post of IVth class & the work which he was performing is of such a nature which will continued to exist till the existence of the bank i.e. to say that his post & work was of permanent nature. The bank has failed to comply with provision of section 25-F, 25-G & 25-H & Rule 77 & 78 of Industrial Disputes Act, 1947 before the removal of workman from service & has also failed to observe the principles of natural justice hence, it is necessary to declare the removal of workman void. The applicant has not been given one month's notice or one month's pay in lieu of notice or retrenchment compensation before removal from service. It has been further alleged that in Rajasthan there are nearly sixty branches of the bank within the control of Regional Office, Jaipur hence, it was necessary for the bank to prepare the seniority list of the workman working in those branches & they should have removed the junior most employee according to principle of "last come first go" which has not been complied by the bank. It has also been alleged that after removal of the workman from the service new appointments has been made in other branches of the bank existing in the State of Rajasthan but before making such appointments applicant was neither informed nor offered any appointment.

6. It has been further alleged that following the policy of exploitation by misusing the state of unemployment in the country workman was paid only @ 100/- Rs. Per day against the permanent post whereas he should have been paid the wages of a regular employee. The minimum pay scale for the post & cadre on which applicant was working in the bank is Rs. 5450.00 + D.A + CCA+ other allowances which altogether makes out approx. Rs.15000/-. It is pertinent to inform that there is agreement between head office of the bank & workmen's union of the bank that if a workman completes six months of service then he has to be paid the minimum amount of the pay scale available to IVth class employee but the bank has failed to comply above agreement.

7. It has been further alleged that when applicant was not taken back on duty after request made to the Branch Manager then he raised industrial dispute before Central Conciliation Officer, Kota wherein the bank has accepted that applicant was employed as casual labourer for the entire period mentioned above. It has also been alleged that it is important & necessary to note that there is no employment category as 'casual labour' in the bank therefore it is unfortunate that an allegation was made by bank before the Conciliation Officer that the applicant was employed as casual labourer. The nature of the post & the work of the applicant workman was permanent nature. It has also been alleged that the industrial dispute raised before the Conciliation Officer be treated as part of the statement of claim. It has been prayed that the order of removal dated 19.5.2011 be declared illegal & void & applicant workman be reinstated with all pay & benefits & continuity in the service.

8. Notice was sent to opposite party bank against statement of claim which has been dully served on the bank & acknowledgement of service is available on record of the file. On 30.1.2014 instead of proceeding ex-parte an opportunity was given to opposite party fixing 25.3.2014 for filing written statement but written statement was not filed & opposite party remained absent. On 25.3.2014 in above circumstance order was passed to proceed ex-parte against opposite party bank & case was fixed for ex-parte evidence of the applicant on 15.4.2014. On 15.4.2014 ex-parte evidence of applicant Sh. Sunil Kumar has been filed which is affidavit of Sh. Sunil Kumar; along with affidavit annexure-1 to 8 has been attached by applicant which is documentary evidence in form of photocopy as mentioned below:-

Annexure Ex-w-1:-Application of the applicant Sh. Sunil Kumar dated 3.12.2010 addressed to Regional Manager, Syndicate Bank, Jaipur to consider his candidature for recruitment to the post of temporary attendant.

Annexure Ex-w—2:-Letter by Branch Manager, Syndicate Bank, Branch- Ramganjmandi to A.G.M.(Personnel Department), Regional Office, Jaipur.

Annexure Ex-w-3:-Bio-data of Sh. Sunil Kumar dated 1.4.1990 along with photocopy of registration number at employment office, Kota & illegible photocopy of Mark sheet of Secondary School Examination of Sh. Sunil Kumar.

Annexure Ex-w-4:-Undated letter (3 page) of Sh. Sunil Kumar addressed to Conciliation Officer (Central) for issuing direction to Branch Manager, Syndicate Bank, Ramganjmandi in favour of Sh. Sunil Kumar, applicant to work on the post of attendant.

Annexure Ex-w-5:-Letter from Syndicate Bank, Ramganjmandi Branch, Distt: Kota to re-conciliation officer & Assistant Labour Commissioner (Central) Sribhavan, Station Road, Kota Junction regarding industrial dispute between Branch Manager, Syndicate Bank, Ramganjmandi & Sh. Sunil Kumar in matter of denying appointment as attendant to the applicant Sh. Sunil Kumar.

Annexure Ex-w-6:-Letter dated 27.4.2011 by Branch Manager, Syndicate Bank, Ramganjmandi to A.G.M.(Personnel Department), Regional Office, Jaipur for adding the name of Sh. Sunil Kumar in panel of temporary attendant.

Annexure Ex-w-7:-Letter dated 4.5.2011 by Branch Manager, Syndicate Bank, Ramganjmandi to A.G.M.(Personnel Department), Regional Office, Jaipur for adding the name of Sh. Sunil Kumar in panel of temporary attendant.

Annexure Ex-w-8:-Agenda for " Mini-Joint Meeting & Fixation of Suitable date for discussion" dated 23.4.2012 sent to D.G.M., Syndicate Bank, Regional Office, Jaipur by Sh. Banwarilal Agrawal, State Secretary, Syndicate Bank Employees' Union, (Regd.), Lalbag, Lucknow.

Annexure Ex-w-9:-Agenda for " Mini-Joint Meeting & Fixation of Suitable date for discussion" dated 10.9.2013 sent to D.G.M., Syndicate Bank, Regional Office, Jaipur by Sh. Banwarilal Agrawal, State Secretary, Syndicate Bank Employees' Union, (Regd.), Lalbag, Lucknow.

9. In addition to above documents undated letter consisting of 2 page by Sh. Sunil Kumar addressed to A.G.M., Regional Office, Japur has also been filed along with affidavit which is regarding calling the applicant Sh. Sunil Kumar back to the post of attendant. Except above no other evidence or document is on record.

10. Heard ex-parte argument of learned counsel for the applicant Sh. Sunil Kumar & perused the record.

11. Following cases have been referred from applicant side:-

i. AIR 1976 Supreme Court, 1111, The State Bank of India, Appellant V/s Sh. N.Sundara Money, Respondent.

ii. AIR 1979 Supreme Court, 75, M/s Hindustan Tin Works Pvt. Ltd, Appellant V/s The Employees of M/s Hindustan Tin Works Pvt. Ltd. & others, Respondents.

iii. 1982 (44) FLR, Supreme Court, page 250, L.Robert D'souza V/s The Executive Engineer, Southern Railway & another.

iv. 2011 AIR SCW 3455, Devendra Singh V/s Municipal Council, Sanaur.

12. According to settled principle of law initial burden is on the workman to prove that he had in fact worked for 240 days during the preceding 12 months from the date of his alleged termination on 19.5.2011 & such termination was in violation of section 25-F of the Industrial Disputes Act. The workman in para 4 of his affidavit has alleged that from 25.3.2009 to 19.5.2011 he has worked for more than 240 days in each year except Sunday, Public holiday & Bank holidays. Copy of attendance register or detail of payments made in form of wages have not been produced by the workman & there is only mere allegation in the affidavit which is repetition of statement of claim. No other witness like co-worker has been examined to support the case of workman. These are the very basic things which should form the evidence of workman which has not been produced. There is no appointment letter or dismissal letter on record. However, it has been pointed out by the learned counsel for the applicant that Ex-w-2, Ex-w-5, w-6 & w-7 are the documentary evidence which are creation of the bank & in these documents it has been admitted that since creation of the branch of Ramganjmandi workman was working continuously till the date of removal. Although these documents of recommendation by Branch Manager to add the name of the applicant in panel of attendants can not be treated as proof for working by the workman for a period of 240 days but representation (Ex-w-5) made by the bank against industrial dispute raised by workman indicates admission of the bank in para 2,7 & 10 that Ex-w-2,w-6 & w-7 are the recommendations which were made by the bank in form of internal correspondence to consider the name of the applicant for including him in the panel of temporary attendants. All these three exhibited documents indicate that the workman was working in the branch from the day of the opening of the bank on 25.9.2003 till the date of his removal on 19.5.2011. Ex-w-6 is dated 27.4.2011 in which it has been admitted that Sh. Sunil Kumar is still working in the branch on daily wage basis on the post of sweeper. Ex-w-5 which is representation of the bank before the Conciliation Officer admits that workman Sh. Sunil Kumar was engaged as daily wage worker @ 100/- Rs. per day on casual basis. In this representation it has also been alleged that he was not the employee of the bank & he was not issued with any appointment letter to accord him the status of the employee of the bank hence issuing of notice for his removal is not necessary & thus there is no violation of section 25-F of Industrial Disputes Act. Regarding removal of Sh. Sunil Kumar from the service it has been alleged that he was engaged as casual labourer & he has been paid for that & as he is not an employee of the bank the question of his removal from the bank does not arise. It has also been said that he was not removed from the service but only he was discontinued as a casual labourer. From the above admitted position & in absence of any specific denial by the bank about services rendered by the workman & in absence of any pleading & evidence on behalf of bank there is no reason to disbelieve the affidavit of the workman against which there is no cross-examination. The affidavit of the workman that he has worked for 240 days stands uncontroverted. There is no documentary or oral evidence on behalf of bank to disprove the statement of the workman. In absence of reply to statement of claim and any evidence in rebuttal it can be safely inferred that non-applicant has admitted the claim of the workman about 240 days working during

required period. From above fact & circumstances, it is clear that the workman has worked since inception of the bank on 25.3.2009 till the date of his removal hence I am of the view that the workman has succeeded in establishing that he has completed 240 days work in preceding year from the date of his removal on 19.5.2011.

13. As far as the status of a casual labour to be covered within the definition of 'workman' as defined in section 2(s) of the Industrial Disputes Act is concerned reference has been made by learned counsel for the applicant about the law laid down in the case reported in 1982 (44) FLR, Supreme Court, page 250, L.Robert D'souza V/s The Executive Engineer, Southern Railway & another. In the above cited case it has been held by Hon'ble Supreme Court that a daily rated casual labourer is a workman & termination of his service constitute retrenchment & the workman would be entitled to protection the provision of section 25-F of Industrial Disputes Act.

14. In 2011 AIR SCW 3455, Devendra Singh V/s Municipal Council, Sanaur, for a person to be regarded as a 'workman' it has been held by the Hon'ble Supreme Court in para 13 & 14 of the judgement as mentioned below:-

> "13. The source of employement, the method of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.
>
> "14. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

15. About application of Section 25-F of Industrial Disputes Act reference has been made by the learned counsel for the applicant about the law laid down in AIR 1976 Supreme Court, 1111, The State Bank of India, Appellant V/s. Sh. N. Sundara Money, Respondent. In the above cited case out of two employees involved in the appeals pending before the Supreme Court one was re-absorbed in service but the other was out of service during pendency of appeal before the Hon'ble Apex Court. The respondent employee was appointed off & on, by the State Bank of India between July 31st, 1973 & 29 Aug, 1973. The term & condition of appointment was as mentioned below:-

> "1. The appointment is purely a temporary one for a period of 9 days but may be terminated earlier, without assigning any reason there for at the bank's discretion;
>
> 2. The employment, unless terminated earlier, will automatically cease at the expiry of the period i.e. 18.11.1972."

16. This appointment of 9 days went on to the position mentioned earlier for about a year. The appellant State Bank of India suffered defeat before the Hon'ble High Court & consequently preferred appeal before the Hon'ble Supreme Court with special leave. The division bench of the Hon'ble High Court held that respondent was entitled to retrenchment compensation which was not paid & hence the termination was invalid. It was argued by the appellant in the Hon'ble Supreme Court that there was no retrenchment of respondent employee within the meaning of section 2(oo) of Industrial Disputes Act, 1947 & respondent was not entitled to the statutory retrenchment compensation. It was also argued that obligation of making payment of compensation flows only out of retrenchment & not from termination. The Hon'ble Supreme Court referring to the letter of appointment & section 2(oo) of Industrial Dispute held that provision of section 25-F was attracted. In para 9 of the judgement the Hon'ble Apex Court held as under:-

> "9. A break-down of Sec. 2(oo) unmistakably expands the semantics of retrenchment. "Termination ..... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease.' In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Sec. 25F (b) is inferable from the proviso to Section 25F (1) (sic) (Section 25F (a). ..... Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and

intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is no the sole magnetic pull of the provision. A pre-emptive provision to terminate is truck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."

17. Hon'ble Supreme Court dismissed the appeal & it has been held that respondents services were terminated in violation of section 25-F of the Industrial Disputes Act.

18. From perusal of the statement of claim, evidence adduced in support thereof & discussions made above it is clear that the workman has succeeded in establishing that he is a workman within the meaning of section 2(s) of Industrial Disputes Act & has worked for more than 240 days during the preceding 12 months from the date of his termination. Admittedly, no notice or pay in lieu of notice or compensation was paid to him at the time of termination of his services. It is, therefore, established that termination of the workman has taken place in violation of section 25-F of Industrial Dispute Act.

19. The workman in statement of claim & in affidavit has stated that seniority list was not prepared by the bank & the principle of 'last come first go' was not followed & new appointments were made but opportunity was not given neither any information was given to the applicant therefore, there was violation of section 25-G & 25-H & Rule 77 & 78 of the Industrial Disputes Act. From perusal of the entire pleading it shall appear that no one has been named who has been appointed after the date of termination of the applicant. About retention of junior in service it is pertinent to note that in para 2 of the statement of claim it has been said that in Sawaimadhopur branch Sh. Porulal Meena was made permanent but it has not been indicated whether he was an employee junior to him hence there does not appear to be any violation of section 25-G by retaining Sh. Porulal Meena or by making him permanent. Similarly there does not appear to be any violation of section 25-H as person appointed after the termination have not been named neither there date of appointment has been mentioned hence except the bald statement there is no documentary evidence in support of the contentions. Thus, the workman has failed to establish any violation of section 25-G or 25-H of the Industrial Disputes Act. Here it is important to mention that in the matter of compliance with section 25-G & 25-H of the Act, in 2006 Supreme Court Cases (L&S) 38, Surendranagar District Panchayat, Appellant V/s Dahyabhai Amarsinh, Respondent, it has been held by Hon'ble Supreme Court, "……. In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so-called seniority, no relief could be given to him for non-compliance with provisions of the Act." In the present case it is admitted by the applicant that there is no existence of seniority list of the workman employed on daily wage basis hence, I am of the view that as per law laid down by Hon'ble Apex Court in Surendranagar District Panchayat, Appellant V/s Dahyabhai Amarsinh, Respondent, benefit of section 25-G & 25-H cannot be claimed by the applicant workman.

20. As far as granting relief to the applicant is concerned it is clear that the alleged action of the management of bank in terminating the services of the workman was in violation of section 25-F of Industrial Disputes Act. It has been argued by learned counsel for applicant that where there is violation of section 25-F of Industrial Disputes Act the workman can be reinstated with other consequential benefits. In support of his contention the learned counsel has referred the decision in AIR 1979 Supreme Court, 75, M/s Hindustan Tin Works Pvt. Ltd, Appellant V/s The Employees of M/s Hindustan Tin Works Pvt. Ltd. & others, Respondents. In above cited case Labour Court held the retrenchment of certain workman illegal & had directed the reinstatement with full back wages. Before the Hon'ble Apex Court the matter of grant of full back wages was challenged but the relief of reinstatement was not in challenge. Considering the various facts & circumstances of the case appeal was partly allowed by Hon'ble Apex Court & 75% back wages was awarded to be paid in two equal instalments.

21. This legal position is not in dispute that in case of non-compliance of section 25-F the workman can be reinstated with other consequential reliefs.

22. Earlier in cases of termination in violation of section 25-F reinstatement of the workman with full back wages used to be automatically granted, but keeping in view several other factors, a change in the said trend is now found in the recent decisions of the Hon'ble Supreme Court. In a large number of decisions in the matter of grant of relief of the kind, Hon'ble Apex Court has distinguished between a daily wager who does not hold a post and a permanent employee.

23. In recent decision (2010) 1 SCC (L&S) 545 Jagbir Singh V/s Haryana State Agriculture Mktg. Board after considering the earlier decisions referred to therein on the point should an order of reinstatement automatically follows in a case of violation of section 25-F of the I.D.Act Hon'ble Apex Court has observed that:-

"It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that

an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee."

24. Continuing this line of approach in decision (2010) 2 SCC (L&S) 376 Hon'ble Apex Court has observed as under:-

"While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation."

"There has been a shift in the legal position laid down by the Supreme Court and now there is no hard-and-fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

25. In present matter, the workman has worked as part time daily wager safai karamchari & was performing the work relating to Safai Karmchari. As per documents brought on record by the workman he was getting an amount of Rs.100/- per day as wages. He was not holding any regular post. Keeping in view the nature of job & nature of employment, the total length of service rendered by the claimant & having regard to the entire facts & circumstances of the case, instead of reinstating him the interest of justice will be sub-served by paying compensation to the workman instead & in lieu of relief of reinstatement in service.

26. In the result, the reference is answered accordingly in favour of the workman & it is held that the action of the management in termination of the services of the workman being in violation of section 25-F of the Act is illegal & unjustified. Therefore, the non-applicant is directed to pay compensation to the workman a sum of Rs.10,000/-(Ten Thousand only) instead & in lieu of his reinstatement of service. The payment shall be made within eight weeks from the publication of the award failing which it shall carry interest @ 8% per annum

27. Award as above.

28. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D.Act.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 30 जून, 2014

का.आ. 1917.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 27/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–12011/71/2005–आईआर(बी.–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th June, 2014

S.O. 1917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 27/06/2014.

[No. L-12011/71/2005 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 27/2006

Ref. No. L-12011/71/2005-IR (B-II) dated: 26.09.2006

BETWEEN :

The Secretary
Allahabad Bank Staff Association
C/o Allahabad Bank, Main Branch
Hazratganj
Lucknow – 226 002
(Espousing cause of Shri Ram Lal)

AND

The Assistant General Manager
Allahabad Bank
Hazratganj Lucknow, Kesarbagh Branch
Lucknow – 226 001

AWARD

1. By order No. L-12011/71/2005-IR (B-II) dated: 26.09.2006 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Secretary Allahabad Bank Staff Association, C/o Allahabad Bank, Main Branch, Hazratganj, Lucknow and the Assistant General Manager, Allahabad Bank, Hazratganj Lucknow, Kesarbagh Branch, Lucknow for adjudication.

2. The reference under adjudication is:

> "WHETHER THE CLAIM OF SHRI RAM LAL FOR PAYMENT OF HALTING ALLOWANCE FOR THE PERIOD FROM 19.12.2001 TO 10.05.2004 FROM THE MANAGEMENT OF ALLAHABAD BANK IS JUST AND LEGAL? IF NOT, WHAT RELIEF IS THE DISPUTANT CONCERNED ENTITLED TO?"

3. It is admitted case of the parties that the workman, Ram Lal, Special Assistant was transferred from KUMS Gonda branch, Gonda to Kaiserbagh branch, Lucknow on 31.01.2001 vide order dated 30-01.2011 consequent to undertaking dated 22.01.2001. The workman vide undertaking dated 22.01.2001, agreed upon to work in KUMS Gonda Branch as Special Assistant even after joining at Kaiserbagh branch, Lucknow without claiming halting allowance till a new special assistant is posted at KMUS Gonda. Accordingly, the workman joined Kaiserbagh branch, Lucknow on 01.02.2001 and went back next day i.e. on 02.01.2001 to work in KUMS, Gonda as per undertaking given by him. The workman was relieved finally from KUMS Gonda branch for Kaiserbagh branch, Lucknow on 10.05.2004.

4. The workman's union has submitted that the workman was reverted from the post of Special Assistant to the post of Clerk-cum-Cashier on 19.12.2001 and accordingly, the under taking dated 22.01.2001, given by the workman, became meaningless as the same was for the post of Special Assistant. It is alleged by the workman's union that on reversion on 19.12.2001 the workman became entitled for halting allowance @ Rs. 125/- per day who is kept out of the city for official work; but the management denied him of halting allowance for the period 20.12.2001 to 10.05.2004. Accordingly, the workman's union has submitted that the workman be held entitled for halting allowance for the period from 20.12.2001 to 10.05.2004.

5. The management of the Allahabad Bank has denied the allegation of the workman's union and has submitted that the workman was reverted back as Clerk-cum-Cashier on 19.12.2001 by way of punishment after holding an inquiry and the claim of the workman's union for halting allowance w.e.f. 20.12.2001 to 10.05.2004, on the ground that after his reversion as Clerk-cum-Cashier, the undertaking given by him became ineffective, is legally not tenable as the undertaking given by the workman will hold good till fresh request for being sent back to Lucknow is made by the workman. It is specifically submitted by the management that there is no provision either in any rule or Bipartite Settlement for claim of holding allowance when an award staff is sent from one place to another for an indefinite period. It is also submitted that the halting allowance is paid where an award staff who is sent on tour for short duration in connection with official work; and in that condition, the halting allowance is paid to compensate such an employee for expenses, incurred by him, during the course of his stay. Accordingly, the management has submitted that since the workman was transferred on his own request for an indefinite period, therefore, he is not entitled for the halting allowance, and the workman union's case is liable to be rejected being devoid of any merit.

6. The workman's union has filed its rejoined; wherein it has stated nothing new apart from repeating the averments already made in the statement of claim.

7. The workman's union has filed photo copies of communications/representations in support of its case. The workman was cross-examined by the authorized representative of the management. The management of Allahabad Bank filed affidavit of Shri Anurodh Kumar, Officer (Personnel/Administration Deptt.); but he did not turn up for cross-examination in spite of several opportunities being afforded to him, which led to presumption that the management is not interested in producing the witness for cross-examination, as such, the opportunity to be cross-examined was closed and next date was fixed for argument.

7. Heard, representatives of the parties and perused entire evidence on records.

8. The learned representative on behalf of the workman has contended that when the workman had waived 'halting allowance' vide undertaking dated 22.01.2001 agaisnt the post of Special Assistnat. But when he got reverted on 19.12.2001, his undertaking dated 22.01.2001 became in ineffective and therefore, he is entitled for halting allowance from 20.12.2001 to 10.05.2004, the date the workman was finally relieved from KUMS Gonda branch for Kaiserbagh branch, Lucknow.

9. In rebuttal, the authorized representative of the management has argued that the undertaking given by the workman holds good even on reversion of the

workman; as the reversion was by the way of punishment after holding an inquiry. It is contended that there is no provision either in any rule or Bipartite Settlement for claim of holding allowance when an award staff is sent from one place to another for an indefinite period; in the case of workman the transfer was made on his own request/ undertaking for a long period of time i.e. approximately for 3 ½ years.

10. I have given my thoughtful consideration to the rival submission of the authorized representatives of the parties and perused respective pleadings and scanned evidence available on record.

11. The workman's union has come up with the case that the undertaking given him was for the post of Special Assistant and on his reversion to the post of Clerk-cum-Cashier, he became entitled for the halting allowance under Rules. On the contrary the management has come with the case; firstly, that the reversion was in the wake of punishment consequent to some misconduct, committed by the workman; and secondly, that the halting allowance is allowed to an award staff when he is sent for short duration; whereas in this case the workman as transferred for an indefinite period.

12. The workman's union has not disputed the action of the reversion the workman neither in its rejoinder nor in its evidence before this Tribunal. Moreover, it is pleaded by the union that under Rules the workman was entitled for halting allowance. The issue before Tribunal is regarding admissibility/entitlement of the halting allowance to the workman. The workman's union has examined the workman, who has stated in cross-examination that halting allowance is admissible on posting outside the branch.

The management has disputed the entitlement of the workman regarding halting allowance; but failed to prove the same with oral evidence as the management's witness whose affidavit has been filed in support of the pleading before this Tribunal did not turn for cross-examination; in spite of several dates being given. The management has pleaded that the halting allowance is paid where an award staff who is sent on tour for short duration in connection with official work; and in that condition, the halting allowance is paid to compensate such an employee for expenses, incurred by him, during the course of his stay. It is has also pleaded that there is no provision either in any rule or Bipartite Settlement for claim of holding allowance when an award staff is sent from one place to another for an indefinite period. But it has neither filed any documentary evidence nor turned up to substantiate its pleadings through oral evidence that the workman on getting reverted from the post of Special Assistant to Clerk-cum-Cashier was not entitled for halting allowance. On the contrary the workman's union has proved its pleadings by producing its witness for cross-examination who has stated that under Rules he is entitled for halting allowance. Hon'ble Apex Court in State of U.P. vs. Sheo Shanker Lal Srivastava & others (2006) 3 SCC 276 the statement of the witness, having not been controverted would be deemed to be admitted.

13. Hence, in view of the facts and circumstances of the case and law cited hereinabove, the management of the Allahabad Bank has utterly failed to substantiate its pleadings by leading evidence. Therefore, I am of the opinion that the action of the management of Allahabad Bank in non-payment of halting allowance to the workman for the period 19.12.2001 to 10.05.2004 was neither justified nor legal. Accordingly, the workman concerned is entitled for payment of Halting Allowance at the prescribed rates for the period 19.12.2001 to 10.05.2004.

14. The reference under adjudication is answered accordingly.

15. Award as above.

LUCKNOW

19th June, 2014

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 30 जून, 2014

का.आ. 1918.—औद्योगिक अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रिर्जव बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चैन्नई के पंचाट (285/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–12012/260/99–आईआर(बी.–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th June, 2014

S.O. 1918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 285/ 2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Reserve Bank of India and their workmen, received by the Central Government on 27/06/2014.

[No. L-12012/260/99 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 4th June, 2014

PRESENT : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 285/2001

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Reserve Bank of India and their workman)

BETWEEN

The Secretary : 1st Party/Petitioner
Reserve Bank Employees' Association
Association
Fort Glacis, Rajaji Salai
Chennai-600001

AND

The Regional Director : 2nd Party/Respondent
Reserve Bank of India
Fort Glacis, Rajaji Salai
Chennai-600001

Appearance:

For the 1st Party/Petitioner : Through Authorized Representative
For the 2nd Party/Respondent : Sri G. R. Reddy & D. Hariharan, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/260/99/IR (B-II) dated 11.11.1999 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

> "Whether the demand of the Reserve Bank of India Employees Association in fixation of pay of Sri B. Devakadatcham at Rs. 315/- p.m. with effect from 14.12.1979 is justified?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 285/2001 and issued notices to both sides. The petitioner has appeared through the aggrieved person on whose behalf the dispute was raised and the Respondent through its counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

B. Devakadatcham who is working as Clerk/Coin Note Examiner, Grade-II in the Respondent Bank is a member of the Petitioner Association. Devakadatcham was appointed by the Respondent in its service on 14.12.1979. He was an ex-serviceman and was drawing Rs. 284/- per month at the time of discharge from defence service. The Government of India, Ministry of Defence had issued several office memoranda in respect of re-fixation of pay of ex-serviceman on re-employment in other civil services. The Govt. of India, Ministry of Finance had issued OM No. 2/8/78 dated 21.01.1980 and 02.02.1980 regarding fixation of pay of ex-servicemen employed in the Bank. The Respondent, the Reserve Bank of India did not implement these orders initially. By Administrative Circular dated 25.01.1988 the Reserve Bank decided to implement the OM of the Ministry of Finance dated 21.01.1980. As per the administrative circular the pay of ex-serviceman appointed in the bank between 01.09.1978 and 30.06.1983 should be fixed in such a way that the basic pay so fixed plus pension in excess of the specified exemption limit of Rs. 125/- is not less than the basic pay last drawn at the time of discharge from defence service. Devakadatcham was appointed in RBI on 14.12.1979 which is within the above period. His pay should have been fixed notionally protecting his last pay drawn at the time of discharge from defence service at Rs. 284/- plus two additional increments for graduation. Reserve Bank of India offered appointment to Devakadatcham in the scale of pay of Rs. 210/-. His initial pay was fixed at Rs. 230/- including two increments for graduation. The National Industrial Tribunal who was adjudicating the industrial dispute in respect of wage revision of the workmen of Reserve Bank of India passed its award and this was published on 18.07.1981. Consequently, the wages of workmen were revised retrospectively and the pay of Devakadatcham was revised to Rs. 440/-, taking the basic pay of Devakadatcham at Rs. 230/-. According to the Respondent the revised wages were more than Rs. 284/- which was being drawn by Devakadatcham at the time of discharge from military service and there was no necessity for increase as per the administrative circular. In fact the new scale came into effect only after publication of the award on 18.07.1981. As the basic pay at the time of discharge of Devakadatcham was Rs. 284/- and the initial pay fixed in the bank was Rs. 230/- only which was less than the pay at the time of discharge from defence service, his basic pay should have been notionally fixed at Rs. 284/- with two additional increments for graduation totaling Rs. 315/-. Thereafter his pay should have been enhanced to Rs. 540/- corresponding to the stage of Rs. 315/- taking into account the wage revision consequent to the award. Ex-Servicemen employees appointed elsewhere were extended all the benefits due to them. However, the attitude of the Respondent was totally negative. An order may be passed holding that Devakadatcham is entitled to re-fixation of pay @ Rs. 315/- per month with effect from 14.12.1979 and for revised pay @ Rs. 540/- per month correspondent to the stage of Rs. 315/- per month after pronouncement of award by the National Tribunal.

4. The Respondent has filed Counter Statement contending as follows :

Devakadatcham was appointed in the Respondent's service on 14.12.1979. He was an ex-serviceman. On his appointment his pay was fixed at the minimum of the time

scale applicable to Class-III staff i.e. @ Rs. 230/- per month inclusive of two advance increments for graduation. Even though a settlement had been reached between the Reserve Bank Employees Association and the Respondent Bank, the pay of Devakadatcham was fixed in the old scale only as the settlement was pending before the National Industrial Tribunal for a consent award. Subsequently, his pay was re-fixed at Rs. 440/- with effect from 14.12.1979 as per the new settlement subject to approval by the National Tribunal, as per the Central Office circular of the Respondent. The circular dated 25.01.1988 of the Bank provides for re-fixation of pay of all ex-servicemen appointed in the bank by protecting their last pay and DA drawn in the defence service. As per the circular for ex-servicemen who are appointed in bank's service between 01.09.1978 and 30.06.1983 basic pay was required to be fixed so that the basic pay so fixed plus pension in excess of exemption limit was not less than the basic pay last drawn at the time of discharge from defence service. Devakadatcham was drawing Rs. 284/- at the time of his discharge and he was a non-pensioner. His pay had been fixed at Rs. 440/- as on the date of his appointment and this was more than the pay drawn by him at the time of his discharge. Even though the award of the National Tribunal was notified at a later date, it came into force w.e.f. 01.09.1978. So there is no basis for the contention of the petitioner that pay should have been fixed in the old scale and again revised when the award came into force. There was no old pay scale on the date when Devakadatcham joined the service of the Respondent. There is no justification in the demand made by the petitioner on behalf of Devakadatcham.

5. When the dispute was tried before my predecessor WW1 and MW1 were examined and Ext.W1 to Ext.W19 and Ext.M1 to Ext.M4 were marked. My predecessor had considered the rival contentions and passed award on 31.01.2002 holding that there is no justification in the demand made by the petitioner. The petitioner had challenged the award by Writ Petition No. 21691/2002 before the Hon'ble High Court. Additional documents were filed by the petitioner to show that the circular of the Reserve Bank had been given effect to in respect of certain employees who were similarly placed like that of Devakadatcham. The Hon'ble High Court had directed that the pay is to be fixed at Rs. 275/- and disposed the Writ Petition accordingly. The Reserve Bank of India filed Writ Appeal No. 915/2013 challenging this order. The Division Bench partly allowed the appeal and set aside the order and remanded the matter to this Tribunal for fresh adjudication as to the stand of the petitioner taken in the affidavit filed before the High Court and also the reply affidavit of the Management. The parties were given liberty to file additional pleadings and let in additional evidence. This Court was directed to dispose the matter within six months from the date of receipt of the copy of the judgment.

6. After the matter was remanded to this Court, the petitioner has filed additional Claim Statement, the Respondent has filed additional Counter Statement in reply to this and the petitioner has filed rejoinder also. WW1 has been examined further and Ext.W20 to 30 and Exts.M5 and M6 were marked also.

7. **The points for consideration in the case are**:

(i) Whether the demand of the petitioner to fix the pay of Devakadatcham at Rs. 315/- per month w.e.f. 14.12.1979 is justified?

(ii) What is the relief, if any, to which the concerned employee is entitled?

The Points

8. The facts of the case are not in dispute. Sri Devakadatcham who was an ex-serviceman was appointed as Clerk-cum-Coin-Note Examiner by the Respondent on 14.12.1979. His pay was fixed at Rs. 230/- inclusive of two increments for Graduation. Even before Devakadatcham had joined the service of the Respondent dispute regarding the pay and other benefits for the Reserve Bank employees have been referred to National Tribunal, Bombay and was under its consideration. Even before the petitioner joined the service, on 28.09.1979, the Respondent had entered into a settlement with the employees fixing revised scales of pay. However, the dispute having been before the National Tribunal the settlement was submitted before the National Tribunal for approval before it was put into force. The settlement was pending approval at the time Devakadatcham had joined the Bank. So in spite of the settlement the pay that was fixed for Devakadatcham was in accordance with the old scale. The National Tribunal subsequently approved the award with some very limited modifications. The Respondent Bank re-fixed the pay of Devakadatcham on the basis of its circular dated 01.10.1980 as Rs. 440/- w.e.f. 14.12.1979, the date of his appointment subject to approval by the National Tribunal. This was approved by the Tribunal later on 17.06.1981. Devakadatcham was granted annual increments and subsequent settlement benefits also.

9. Devakadatcham, the workman had no dispute regarding the fixing of his pay on the basis of the settlement until the Respondent Bank issued a circular on 25.02.1988 implementing the government order regarding fixation of pay of ex-serviceman. In fact the government had been issuing several orders regarding fixing of the pay of ex-serviceman. The petitioner has produced all these orders and these are marked as Exts.W3 to Ex.W9. The OM of the government that was in force at the time when Devakadatcham joined the Respondent Bank is Ex.W7 dated 19.07.1978. However, this OM as well the previous OMs were directions not to deduct a specified amount out of pension from military service while fixing the pay on re-employment. Ex.W9 is the OM issued by the Finance

Ministry on 21.01.1980, after Devakadatcham entered the service of the Respondent. The direction in this was that the pay of ex-serviceman on re-employment may be fixed at a higher stage after allowing an increment for each year of service rendered in a post not lower than in which he is employed. In addition to the pay so fixed pension and other retirement benefits was to be allowed to be drawn subject to the limitation that the re-employment pay plus pension and pension equivalent to other retirement benefits does not exceed last pay drawn or Rs. 3,000/- whichever is less. Another OM was issued by the Ministry on 02.02.1980 almost on the same lines. However, Respondent had not immediately implemented the directions contained in OMs dated 21.01.1980 and 02.02.1980 which are marked as Ex.W8 and Ex.W9 respectively. After some years, in 1988, by circular dated 25.01.1988 the Respondent Bank has decided to implement the direction in the OMs issued by the Government. In this circular, the copy of which is marked as Ex.W11 ex-servicemen who are appointed in the bank between 01,09.1978 and 30.06.1983 are put in a particular category. As per this, the Basic Pay of those who joined during this period is to be fixed in such a way that the Basic Pay so fixed plus pension in excess of the specified exemption limit is not less than the Basic Pay last drawn at the time of discharge from the defence service. Apparently, Devakadatcham is a person who was appointed in the Reserve Bank during this period. He was not entitled to pension on discharge from defence service. He was drawing pay of Rs. 284/- plus two additional increments for Graduation making a total of Rs. 315/- at the time when he was discharged from defence service. The stand of the petitioner is that on the basis of the OM issued by the Government which was implemented by the Reserve Bank by Ext.W11, the pay of Devakadatcham should be initially fixed as Rs. 315/- as on the date of his appointment. His pay thereafter should have been enhanced to Rs. 540/- corresponding to the stage of Rs. 315/- taking into account the wage revision consequent to the award of the National Industrial Tribunal. Ex.W3 is the Pay Certificate showing that Devakadatcham was drawing pay as claimed by him at the time when he was discharged from defence service. The Respondent has rejected the request of Devakadatcham to fix his pay in the manner claimed by him. The stand of the Respondent is that as per the settlement that was approved by the National Industrial Tribunal which was having retrospective effect the pay of Devakadatcham was already fixed as Rs. 440/- inclusive of two additional increments for Graduation which is more than the pay of Rs. 315/- which was more than the last pay drawn by Devakadatcham while in defence service. The Petitioner Association did not accept this stand of the Respondent. It is accordingly the dispute was raised.

10. The concerned workman himself has advanced arguments in the case. According to him it was not proper for the Respondent to delay the implementation of the orders issued by the Government regarding fixation of pay of ex-serviceman. However, it could be seen on going through the orders that were issued by the Government before Devakadatcham joined the service of the Respondent that he being a non-pensioner he would not have been entitled to the benefits of these orders even if they were implemented by the Reserve Bank even before he joined the service of the Bank. As already stated, the direction in the previous orders is that pension drawn by the ex-serviceman for his service in the military need not be deducted to a limited extent while fixing his pay on re-employment. Devakadatcham was not getting any pension and so his pay in the normal course was to be fixed in the same scale that existed in the Bank in respect of other employees. Though as per the settlement the pay of the employees were to be enhanced, it was in abeyance pending approval by the National Tribunal. It was accordingly the pay of Devakadatcham was fixed as Rs. 230/-.

11. What is the position after the Respondent has decided to implement the orders of the Government? The stand of the Petitioner Association is that there is no sanctity for the settlement entered into since the dispute between the employees and the Respondent regarding the pay has already been pending before the National Tribunal. According to the petitioner what is binding is the award of the National Tribunal and not the settlement effected between the Respondent and various associations representing the employees of the Respondent. It is difficult to accept the argument advanced on behalf of the petitioner. The copy of the award of the National Tribunal has been marked on the side of the petitioner as well as by the Respondent. Ext.W17 is the one on the side of the petitioner and Ex.M1 on the side of the Respondent. On going through the award it could be seen that National Industrial Tribunal had considered each terms of settlement entered into. Even an opinion poll was conducted by the Tribunal before passing the award. The Petitioner Association also is a party to the settlement and is a party before the National Industrial Tribunal also. The concerned employee had been already in the service of the Respondent when the opinion poll was taken. He has been stating that he has voted against the settlement. However, this will not make matter any different for him so far as the award is concerned. It was with the approval of the Tribunal interim relief was granted by the Respondent to its employees. There is no basis for the contention of the petitioner that the award could not have retrospective effect also. In fact the terms of reference include the date on which the award is to come into force also. Nothing prevents the Tribunal from accepting a settlement that was entered into by the parties and passing it as the award. The settlement having been entered into by the parties as early as on 28.09.1979, the National Tribunal had ordered

that the award in terms of the settlement will be having retrospective effect from 28.09.1979 except for certain items like pay which was to come into force from 01.09.1979. The attack by the petitioner against this is not sustainable.

12. A somewhat similar situation akin to that of the present case has been considered by the Apex Court in STATE BANK OF INDIA AND OTHERS Vs. K.P. SUBBAIAH AND OTHERS reported in AIR 2003 SCC 3016. In this case when the concerned employees who were ex-servicemen joined the Indian Bank the pay and allowances payable to the employees were governed by the Third Bipartite Settlement. The Fourth Bipartite Settlement which came into existence subsequently had retrospective operation. The pay to the employees were fixed based on the policy of the government for protecting the pay that was drawn by the ex-servicemen at the time of their discharge from service. When the Fourth Bipartite Settlement was implemented with retrospective effect there was some reduction in the pay of the concerned employees. They challenged the reduction of pay before the High Court. The High Court stated that the total pay fixed by the bank when the employees entered its service should be protected. While considering the matter the Apex Court observed that it is clear from the various documents based on record that the intention as reflected in the policy of Government of India was to protect the last pay drawn by the concerned ex-servicemen in the Armed Forces. The Apex Court further observed that there was no intention to protect any particular scale of pay. That being the position the demand for a corresponding pay scale has no rational, it was held. The Apex Court found that the High Court was in error in holding that the scale of pay was the determinating factor. The direction that while re-fixing the pay and DA the total pay fixed when the petitioner entered into bank service has to be protected within the corresponding scale of pay cannot be maintained and is indefensible, it was further held. The Apex Court has further held

> "the learned solicitor general is therefore right in his submission that the protection related to pay and not pay-scale of pay. Submission of the learned counsel for the employees that after having been fitted to a scale of pay in force at the time of absorption as a natural corollary and consequentially a corresponding scale of pay in the subsequent settlement at first flush appears attractive. But it does not stand closer scrutiny. The apparent intention was to ensure that the ex-servicemen at the time of employment in the Public Sector Bank does not get an amount as pay lesser than what he was drawing while in defence service. It stands to logic that the employer while fixing pay has to fix it at the level of pay which would ensure compliance with the requirement that it is not less than the last pay drawn".

13. In the present case also the situation is similar. Devakadatcham was drawing a particular amount of pay based on the existing scale at the time he joined the Bank on 14.12.1979. Though even before he joined the Bank there was revision of pay by a settlement, it was pending approval of the National Industrial Tribunal. The settlement had come into operation with retrospective effect. The pay that was due to Devakadatcham after the settlement was put into operation with retrospective effect was more than what he was drawing at the time of discharge from service. If he was allowed to fix the pay on the basis of the Reserve Bank's circular regarding ex-servicemen based on the old pay scale (which was actually not existing at the time when he joined the service) and allowed to refix the pay to the corresponding scale as per the settlement, he would have been getting double advantage. This is not what was intended by the direction of the Government to protect the pay of ex-servicemen. The only intention was that they should not be drawing pay which is lesser than what they were drawing last while in defence service, on re-employment. It was for this reason the Apex Court has declined to allow the demand of the concerned employees in the case of Subbaiah and Others referred to above.

14. The representative of the Respondent has referred to the decision of the Apex Court in ARUNJYOTI KUNDU AND OTHERS reported in 2007 7 SCC 472 also in support of the contention of the Respondent. Here the Apex Court has held that it was open to the Government to extend the benefit to a set of employees with effect from a particular date on the basis of some anomaly found in the report of the Pay Commission. In that case there would not arise any discrimination because the very implementation of the Pay Commission Report would not entitle the Respondents to any benefit but their right to the benefit arose only because of the decision of the Government to extend a particular benefit to them though it is not specified in the Pay Commission Report. It is pointed out by the Authorized Representative that in the present case the pay scales were fixed in the settlement entered into between the Petitioner Association and the Bank and the same was approved by the National Industrial Tribunal also. So there is no reason for the petitioner to complain that the concerned employee was subjected to any discrimination.

15. Before the Hon'ble High Court the petitioner has produced certain additional documents in support of the contention that some employees similarly placed like that of Devakadatcham have been conferred with the benefit in the form of higher fixation of pay. The Division Bench has observed that the prayer of the petitioner for reception of additional documents in respect of this has not been considered and it was also not made clear as to whether any argument had been advanced on the basis of the affidavit for reception of additional documents. It was because of the contention of the petitioner that similarly

placed persons were conferred with benefits as claimed by the petitioner on behalf of Devakadatcham also that the matter has been remanded to this Court. The petitioner has produced documents pertaining to Thangaraj and Narinder Sharma who were ex-servicemen in the service of the Respondent. Ext.W25 is the representation made by Thangaraj and Ext.W26 is the order issued by the Respondent Bank re-fixing the pay of Thangaraj. Ext.W27 is the Pay Certificate of Narinder Singh Sharma and Ext.W28 is the letter from the Respondent re-fixing the pay of Narinder Singh Sharma. Even earlier the requisition letter given by Vasudevan for re-fixation of pay, the last pay drawn certificate of Vasudevan while in Air Force service and the order of the Respondent Bank re-fixing the pay of Vasudevan and also another order re-fixing his pay consequent upon the settlement which came into effect on 18.08.2000 by the petitioner were produced and marked as Exts.W13 to Ext.W16 respectively.

16. On a scrutiny of the documents pertaining to the above employees of the Bank who were ex-servicemen, it could be seen that there is no parity between their position and that of Devakadatcham. Thangaraj had joined the Bank on 16.03.1979 and Narinder Sharma on 21.08.1979. Thus it could be seen that both of them have joined the Bank before the settlement came to be in operation. It was for this reason their pay was fixed under the pre-revised pay scales at the time of their appointment. Vasudevan had joined the Bank on 20.09.1999. Settlement was reached between the Petitioner Association and the Respondent on 18.08.2000 for revision of pay scales and this has come into effect from the date of settlement. The pay of Vasudevan who was an employee of the Bank prior to the date of settlement was fixed in the pre-revised pay scales and his pay was revised after the settlement had taken effect. Even before the settlement came into effect he was appointed on the old pay scale protecting the pay last drawn by him at the time of discharge from defence service. Thus it could be seen that the cases of Thangaraj, Narinder Sharma and also Vasudevan are different from that of Devakadatcham. All these three persons have joined the Bank while the old pay scale was in existence and there was no retrospective effect of the new pay scales so far as these persons were concerned. On the other hand in the case of Devakadatcham, unfortunately for him a settlement had already been arrived at when he joined the Bank and the settlement though approved later was put into operation with retrospective effect from a date before Devakadatcham joined the service of the Bank. The pay to which he was entitled as per the settlement was more than what he was drawing from the defence service and so there was no necessity for protection of the last pay drawn by him while in defence service. In fact if the relief claimed by the petitioner is allowed it will be granting double benefit to Devakadatcham. It was not at all the intention of the Government while issuing the orders in respect of ex-servicemen. I find that the petitioner is not entitled to any relief.

17. In view of my findings above, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th June 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner	:	WW1, Sri B. Devakadatcham
For the 2nd Party/Management	:	MW1, Sri D. Hariharan

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	-	Offer of appointment No. M 4632 /34(44)79/80 dated 17.10.1979 issued by Reserve Bank of India to Sri B. Devakadatcham
Ex.W2	-	Pay Certificate as on June 1974 issued by JWO, JWO I/c Accounts, Air Force Station, Tambaram to Sri B. Devakadatcham
Ex.W3	-	Office Memorandum No. F8(34)/ E.III/57 dated 25.11.1958 issued by Government of India, Ministry of Finance, Department of Expenditure, New Delhi
Ex.W4	-	Office Memorandum No. E6(8)/ E.iII/63 dated 11.04.1963 issued by Government of India, Ministry of Finance, Department of Expenditure, New Delhi
Ex.W5	-	Office Memorandum No. F7(34)/ E.III/62 dated 16.01.1964 issued by Government of India, Ministry of Finance, Department of Expenditure, New Delhi
Ex.W6	-	Office Memorandum No. F(1)-E.III(A)/74 dated 02.03.1974 issued by Government of India, Ministry of Finance, Department of Expenditure, New Delhi
Ex.W7	-	Office Memorandum No. F5(14)/ E.III(B)/77 dated 19.07.1978 issued by Government of India, Ministry of Finance, Department of Expenditure, New Delhi

Ex.W8	-	Circular No. 2/8/78-SCT(B) dated 21.01.1980 issued by Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi
Ex.W9	-	Circular No. 2/8/78-SCT(B) dated 02.02.1980 issued by Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi
Ex.W10	-	Press cuttings dated 21.08.1986 from the Hitavada, regarding Poojary's instructions to RBI
Ex.W11	-	RBI, Central Office circular no. PPD No. G.57/570/R(II) CP-193(4)/ 87-88 dated 25.01.1988
Ex.W12	-	Appointment Order No. 117/1999-2000 dated 20.09.1999 issued by RBI, Chennai Office to Sri K. Vasudevan
Ex.W13	-	Requisition letter dated 20.10.1999 for re-fixation of pay to CGM, RBI, Chennai by Sri K. Vasudevan
Ex.W14	-	Last Pay Drawn Certificate of Sri K. Vasudevan issued by Air Force Station, Palam, New Delhi-10
Ex.W15	-	Re-fixation of pay Office Order No. 325/1999-2000 dated 15.02.2000 issued by RBI to Sri K. Vasudevan
Ex.W16	-	Re-fixation of Pay Office Order No. 156/2000-2001 dated 04.10.2000 issued to Sri K. Vasudevan consequent upon the settlement dated 18th August, 2000 between the Bank and All India Reserve Bank Employees' Association
Ex.W17	-	The Award of National Industrial Tribunal, Bombay (Dighe Award) Ref. NTV 1 of 1979)
Ex.W18	-	Compendium of Government guidelines in the matter of re-employment, pay fixation etc. of Ex-servicemen in Public Sector Banks issued by Indian Banks Association Bombay 400005
Ex.W19	-	Memorandum of Settlement between All India Reserve Bank Employees' Association and the Management of Reserve Bank of India dated 18th August 2000
Ex.W20	-	Appendix "B" to Ministry of Defence O.M. No. 2 (29) 61/6423/ D (Civil-I) dated 08.8.1962
Ex.W21	02.06.1999	Central Office Circular issued by Insurance Corporation of India to all Zonal Manager / Divisional Managers, etc.
Ex.W22	10.07.1989	Pay Certificate of B. Devakadatcham
Ex.W23	16.06.1979	Appendix "A" of National Industrial Tribunal, Bombay Award (Contained in Page 43)
Ex.W24	19.02.1980	Appendix "C" of National Industrial Tribunal, Bombay Award (Contained in Page 54 to 57)
Ex.W25	26.03.2002	Representation from Sri J.J. Thangaraj to Respondent Bank
Ex.W26	09.09.2002	Office Order issued by Respondent Bank regarding re-fixation of Sri J.J. Thangaraj
Ex.W27	14.06.1988	Pay Certificate of Sri Narinder Singh Sharma issued by A.F.C.A.O. New Delhi
Ex.W28	18.06.2003	Letter from Respondent Bank regarding re-fixation of pay of Sri Narinder Singh Sharma enclosing work sheet
Ex.W29	12.03.2001	Letter of Respondent Bank regarding denial of re-fixation to the petitioner
Ex.W30	06.05.1980	Ministry of Finance, Department of Economic Affairs (Banking Division) O.M. 2/19/79-SCT 9 (B) dated 06.05.1980
Ex.W31	09.04.1987	Xerox copy of D.O. letter from Sri Mantreshwar Jhan M.O.F. to Dy. Governor RBI, Bombay
Ex.W32	20.02.2013	Xerox copy of judgment of WP No. 21697/2002
Ex.W33	05.11.2013	Xerox copy of judgment of WA No. 915/2013
Ex.W34	01.10.1980	Xerox copy of circular from Dy. Manager RBI C.O. Bombay to the Manager, RBI, Madras
Ex.W35	March 2000	Xerox copy of statement of claim in ID No. 285/2001
Ex.W36	30.01.2002	Xerox copy of impugned order made in ID No. 285/2001

On the Management's side :

Ex.No.	Date	Description
Ex.M1	-	Dighe Award dated 8th July, 1981
Ex.M2	-	Reserve Bank of India Central Office Circular PRD No. 580/ CP.199/80-81 dated 01.10.1980
Ex.M3	-	Letter F.No. 10/49/84-SCT(B) dated 10th June 1986 issued by Govt. of India, Ministry of Finance (Banking Division), New Delhi
Ex.M4	-	Reserve Bank of India instructions issued under Circular PPD.G/57/570/R(ii) CP.193(4)87-88 dated 25.01.1988
Ex.M5	23.02.2012	Affidavit of Sri B. Devakadatcham
Ex.M6	17.12.2012	Reply affidavit filed on behalf of Reserve Bank of India

नई दिल्ली, 30 जून, 2014

का.आ. 1919.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 42/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–12011/64/2009–आईआर (बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th June, 2014

S.O. 1919.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2009) of the Cent. Govt. Indus. Tribunal -cum - Labour Court-Lucknow as shown in the Annexure, in the industrial dispute between the management of Punjab & Sind Bank and their workmen, received by the Central Government on 27/06/2014.

[No. L-12011/64/2009 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 42/2009

Ref. No. L-12011/64/2009-IR (B-II) dated: 06.10.2009

BETWEEN

District Secretary
Punjab & Sind Bank Staff Association
Punjab & Sind Bank 11, M.G. Marg
Lucknow

AND

Assistant General Manager
Punjab & Sind Bank
Lalbagh
Lucknow

AWARD

1. By order No. L-12011/64/2009-IR (B-II) dated: 06.10.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the District Secretary, Punjab & Sind Bank Staff Association, Punjab & Sind Bank11, M.G. Marg, Lucknow and the Assistant General Manager, Punjab & Sind Bank, Lalbagh, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF PUNJAB & SIND BANK IN (I) NON-FILING UP OF VACANCIES OF COMPUTER OPERATORS IN THE BRANCHES OF LUCKNOW CITY (II) NON-PAYMENT OF COMPUTER OPERATION (CO) SPECIAL ALLOWANCE TO ELIGIBLE WORKMEN AND (III) WITHDRAWAL OF CO SPECIAL ALLOWANCE IN RESPECT OF THOSE WORKMEN WHO WERE ALREADY IN RECEIPT OF CO SPECIAL ALLOWANCE AS PER SETTLEMENT DATED 6/4/98 IS LEGAL AND JUSTIFIED? WHAT RELIEF THE WORKMAN CONCERNED IS ENTITLED TO?"

3. The case of the workman's union, in brief, is that the management of the Punjab & Sind Bank has entered into a settlement, circulated vide staff circular No. 1622 dated 30.05.1998 and as per provisions contained in para 6 (iv) of the circular the regular vacancy of the Computer Operators shall be filled immediately. Further, as per para 6 (v) the if the vacancy of Computer Operator is created on temporary basis then Computer Operator allowance shall be paid to the senior most clerk of the branch and furthermore, as per provisions of para 6 (viii) of the circular, any person who refuses to accept the post as Computer Operator shall be debarred for a period of two years for consideration of the post for which refusal was made. It has been alleged by the workmen's union that the management is not observing the above provisions of the circular dated 30.05.1998 as it is neither appointing Computer Operators nor making payment of Computer

Operator Allowance and has also withdrawn the Computer Operator Allowance in respect of those employees who were already getting the Computer Operator Allowance. Accordingly, the workman's union has prayed that the management of Punjab & Sind Bank be directed to make appointment on the post of Computer Operator and make payment of Computer Operator Allowance to those who are eligible for same; and also to allow the Computer Operator Allowance to those employees who were earlier getting the Computer Operator Allowance.

4. The management of the Punjab & Sind Bank has denied the claim of the workman's union by filing the written statement; wherein it has submitted that the management of Punjab & Sind Bank is strictly abiding by the provisions of the settlement, circulated vide dated 30.05.1998 and the statement of claim of the workmen's union has no merit. It has also disputed the representation of the workmen's union by Shri M.K. Sachan. Accordingly, the management has prayed that the claim of the workmen's union be rejected being devoid of merit.

5. The management filed its written statement on 04.01.2013; and accordingly, 06.02.2013 was fixed for rejoinder; but the workmen's union did not file any rejoined on subsequent dates. However, it moved adjournments on 13.03.2013 and 15.04.2013 seeking time for filing their rejoinder. Thereafter, the workmen's union neither turned up to file the rejoinder nor moved any adjournment. Accordingly, 19.09.2013 was fixed for parties documents. The documents were not filed by either party on 19.09.2013, 22.10.2013, 03.12.2013; hence, next date 07.01.2014 was fixed for workmen's evidence. The workmen's union again did not turn up for filing their evidence on 07.01.2014, 24.02.2014 and 02.04.2014, therefore, 07.05.2014 was fixed for management's evidence. The parties again remained absent on 07.05.2014, therefore, keeping in view the reluctance of the parties to contest their case and long pendency of the case since 2009, the case was reserved for award.

6. I have scanned entire, evidence on record and given my thoughtful consideration to the pleading of the rival parties.

7. It was the case of the workman's union that the management of Punjab & Sind Bank is violating the provisions of the settlement, circulated vide dated 30.05.1998 by not making appointment on the post of Computer Operator and not making payment of Computer Operator Allowance to those who are eligible for same; and also by not allowing the Computer Operator Allowance to those employees who were earlier getting the Computer Operator Allowance. It has alleged that the above action of the management is illegal. The workman's union has field photocopy of the certain documents in support of his pleadings. It filed certain documents, which contained photocopy of circulars and communications in etc. in support of its claim; but has neither filed any rejoineder nor turn up to prove its pleadings through evidence.

8. Per contra, the management of the Punjab & Sind Bank has disputed the claim of the workman's union and has submitted that the allegations of the workman's union are baseless and stated that it is abiding by the terms of the settlement and no illegality has been committed by it.

9. It is settled position of law that a party challenging the legality of the action, the burden lies upon it to prove illegality of the action and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman's union to set out the grounds to challenge the action of management of Punjab & Sind Bank in violating the provisions of circular dated 30.05.1998; and to prove that the action of the management in violating the provisions of circular dated 30.05.1998 was illegal. It was the case of the workman's union that a settlement had been arrived at in between the workmen unions and the Indian Bank Association, circulated vide dated 30.05.1998 and the management of Punjab & Sind Bank is violating certain provisions of it. This claim has been denied by the management; therefore, it was for the workman's union to lead evidence to show that the alleged illegality was committed by the management of Punjab & Sind Bank;; but the workman's union failed to corroborate the allegations by proper evidence.

10. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries v. Labour Court and others, 1984 (49) FLR 38 Airtech Private Limited v. State of U.P. and others and 1996 (74) FLR 2004 (Alld.) Meritech India Ltd. v. State of U.P. and others; wherein it was observed by the Apex Court:

> "that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

11. In the present case the workman's union failed to file any evidence in support of its claim, as it did not turn up for filing its evidence before this Tribunal. As such, there is no reliable material for recording findings that the alleged injustice was done to the workmen's union or the action of the management of Punjab & Sind Bank in not observing the provisions of circular dated 30.05.1998 was illegal and unjustified.

12. Hence, under the facts and circumstances and considering the aforesaid law laid down by the Hon'ble Apex Court, I come to the conclusion that the workmen concerned are not entitled to any of the relief(s) claimed.

13. Award as above.

LUCKNOW.

09th May, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 30 जून, 2014

का.आ. 1920.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आन्ध्रा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 66/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–12012/155/2004–आई आर (बी.–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 30th June, 2014

S.O. 1920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Andhra Bank and their workmen, received by the Central Government on 27/06/2014.

[No. L-12012/155/2004 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 66/2004

Reference No.L-12012/155/2004-IR(B-II) dated: 20.10.2004

Sh. Sheetal Das
S/o Sh. Narsingh Das
R/o Plot No.40, Indira Bazar
Jaipur.

V/s.

The Deputy general Manager
Andhra Bank
Zonal Office, Signature Towers,
NH No.8, Gurgaon.

Present :

For the Applicant : Sh. Radheyshyam Gothawal, Advocate.

For the non-applicant : Mithlesh Singhal, Advocate.

AWARD

23.3.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> "Whether the action of the management of Andhra Bank in terminating the services of Shri Sheetal Das S/o Shri Narsingh Das w.e.f. 5.2.2004 is legal & justified? If not, what relief the workman is entitled to and from which date?"

2. As per statement of claim applicant Sh. Sheetal Das was appointed on 10.2.1997 on the post of Daftary on daily wages on temporary basis. He was paid @ Rs.115/- per day. It has been further alleged by him that time to time work was taken from him in different name.

3. According to statement of para 3 of statement of claim being satisfied with the services of the workman a letter was written on 5.5.2003 to Zonal office by employer to the effect that the workman is on daily wages since last two years hence, he may be considered for regular appointment. It has been further alleged that on 29.1.2004 employer was served with a notice to regularise the services of the workman due to which he was terminated by employer on 5.2.2004 without assigning any reason & another workman Sh. Mukesh was employed in place of workman Sh. Sheetal Das & Ms. Asha was promoted from the sweeper to the post of Daftary.

4. According to statement of para 6, 7 & 8 the workman has worked continuously from 10.2.1997 to 5.4.2004 & he has also worked for 240 days continuously in a calendar year & his junior workman is still in employment of the employer. It has been further alleged that before the termination of service he has not been given any notice or compensation in lieu of notice thus, he has been terminated in violation of Section 25-F, 25-G & 25-H of Industrial Dispute Act, 1947 without just & reasonable cause. It has also been alleged that there has been unfair labour practice on the part of the employer, the work of the Daftary is still existing & the services of the workman has been terminated just because he has served the notice to the employer for regularisation of service hence, it has been prayed that his retrenchment be declared illegal & he be reinstated into the service with all consequential financial benefits with continuity in service.

5. Written statement dated 7.3.2005 starts with preliminary objections before para wise reply of the

statement of claim. In preliminary objection it has been alleged that statement of claim is not based on correct facts hence, claim is fit to be dismissed. On the point of misjoinder of the parties it has been alleged that Sr. Manager, Andhra Bank has been impleaded as defendant no.2 who is not having any separate legal status from Andhra Bank & any suit may be instituted straight in the name of the bank & not against the post of any officer, thus necessary party has not been impleaded in the statement of claim & alone on this ground the statement of claim is fit to be dismissed.

6. It has been further alleged that there is no employer employee relation between applicant workman & bank. The workman was engaged in specific circumstances for specific work on contract basis & he has received the payment according to contract hence, the dispute raised by the workman is not within the ambit of section 2(oo), & 2(bb) of Industrial Disputes Act, 1947 whereas to raise an industrial dispute it is necessary that there must be relationship of employer & employee between the applicant & the opposite party. It has also been alleged that according to policy of the government there is established procedure for appointment of subordinate staff of the bank according to which names are called from employment exchange & after interview of candidates they are appointed depending upon their merit & without adopting the said procedure no subordinate staff can be appointed. Workman Sh. Sheetal Das has not furnished any proof of the kind that he has gone through any procedure of appointment. Sh. Sheetal Das had done the specific work on basis of contract for which he was engaged & he has been paid for the work according to the contract. No case for his appointment as permanent or temporary is made out & the allegation of termination on 5.2.2004 is baseless & untrue & the case is fit to be rejected on this ground alone.

7. It has also been alleged that the work of Daftary can be performed only by a permanent employee because Daftary receives special allowance along with pay hence, it is wrong to say that the workman was appointed on the post of Daftary. The post of Daftary cannot be allocated to a temporary or daily wages worker engaged on contract. The applicant was never in the employment of the bank neither his name was ever entered in attendance register or in the register of regular paid employees. In Andhra Bank there is a established procedure for appointment of subordinate 4th class employees. The applicant intends to have a back door entry in the bank which is in violation of Article 14 & 16 of the Indian Constitution against those employees who have been inducted in the bank after following established procedure of appointment. It has been further alleged that in the matter of temporary employees it is necessary to make it clear that, " The Government of India has stipulated Certain Norms by way of Approach paper as the time measure to resolve the issue of temporary candidates in the Banks, a settlement was entered into with the representative of the recognized award Union on 9.1.1995 under section 12(3) of the Industrial Dispute Act 1947. As per the said settlement those candidates who were engaged by the Bank as temporary hands and who fulfilled certain conditions were empanelled district wise in accordance with the Seniority calculated on the basis of the number of days they have worked in the Bank as and when permanent vacancies are identified, the bank has no option but to absorb the empanelled candidates as stipulated in settlement dated 9.1.95 A copy of settlement dated 9.1.95 is enclosed."

8. In para 12 of the written statement it has been said that the applicant has filed certain papers before the tribunal which are internal correspondence between Branch Office & Zonal Office of the bank & copies of these papers have been secured by applicant without any right which falls within the category of criminal act & questions the credibility of the applicant. An employee of the bank according to Rules of the bank must be reliable otherwise he falls within the category of disqualified employee. Applicant was not in the employment of the bank either as a temporary or a permanent employee hence, his allegation of dismissal from the service on 5.2.2004 is baseless. Accordingly, the reference made in the case is fit to be rejected because for raising an industrial dispute it is necessary that there should be employer employee relation between opposite party & the applicant.

9. With above mentioned preliminary objections against the statement of claim it has been alleged in the written statement against para wise statement of claim that statement in para 1 to 11 are not admitted being wrong, baseless & untrue & have been presented by twisting & turning the true facts. In additional statement of written statement it has been said that it is wrong to say by the applicant that he was appointed on 10.2.1997 on the post of Daftary because if he would have been appointed by the bank then there must have been a monthly pay & other benefits according to the Rules of the bank because the post of Daftary is never allocated to a daily wage worker. This is also against the rule of the bank to ask someone to work in fictitious name or in the name of somebody else. If the applicant has worked in the bank with different names then he must have done that with a view to misguide the bank. Regarding the letter dated 5.5.2003 shown in para 3 of the statement of claim it has been alleged that the letter is the internal correspondence of the bank & recommendation made by someone cannot be made the basis of appointment. If any vacancy is advertised by the bank then applicant may apply in response to the advertisement according to his eligibility. No benefit can be extended to the applicant based on letter dated 5.5.2003.

10. It has been further alleged that if applicant has worked on fix daily wages in the bank then his such work does not entitle him for appointment as temporary or permanent employee. The statement of applicant is wrong that Sh. Mukesh & Ms. Asha were appointed in his place. According to the record of the bank Mukesh had neither been working earlier as sweeper nor he is working now. This is also wrong to say that Smt. Asha has been allocated the work of Daftary because only a permanent employee can hold the post of Daftary & the post of Daftary carriage special allowances along with pay hence, the statement of applicant in respect of Sh. Mukesh & Smt. Asha is fit to be rejected. In case of applicant there is no violation of section 25-F,25-G & 25-H of the Industrial Disputes Act, 1947. As the applicant is not in the employment of the bank the question of giving notice for removal or compensation does not arise. The allegation of the applicant that he has worked continuously from 10.2.97 to 5.2.04 is totally wrong & baseless & no evidence has been filed in support of this allegation. He has also not worked for 240 days continuously in any calendar year as required u/s 25-B of the Industrial Disputes Act, 1947.

11. It has been further alleged that applicant was a daily wage worker & it is wrong to say that he is jobless from the date of removal from service. He is still working & has better earning condition. It has also been alleged that as the applicant was never in the employment of the bank hence, he is not entitled to reinstatement and his application is fit to be rejected.

12. Applicant has filed rejoinder on 9.5.2005 in which he has reiterated the statements of statement of claim.

13. After filing of pleadings from both the parties & documentary evidence Sh. Sheetal Das filed affidavit in evidence on 27.7.2005 & he has been cross examined on 22.8.2005. On statement of applicant that no additional evidence is required to be produced from his side applicant's evidence was closed & opportunity was provided to opposite party to file affidavit in evidence. On 18.10.2005 affidavit of Sh. Dilip Gursahani, Deputy Manager (Customer Relation) has been filed by opposite party in evidence. In process of cross examination of Sh. Dilip Gursahani which was yet to begin on 11.2.2014 applicant filed application with affidavit on 6.2.2014 to dismiss the statement of claim with allegation that he does not want to contest the case further.

14. On 10.12.13 date was fixed for 11.2.14 to cross examine the witness Sh. Dilip Gursahani hence, it was ordered that application filed by applicant on 6.2.2014 be placed for disposal on date fixed 11.2.14 in presence of both the parties looking into the fact of sudden decision by the applicant to have its case rejected which was being contested since 2004. On 11.2.14 none appeared on behalf of applicant to press the application hence, case was again fixed on 20.2.14 for evidence of opposite party. On 20.2.14 witness was present but there was no one from the applicant side to cross examine the witness hence, opportunity for cross examination was closed looking into old pendency of the case & lack of interest of the applicant in pursuing the case further & 28.2.14 was fixed for argument. On 28.2.14 there was advocate strike hence, case was fixed on 24.3.14 for argument.

15. In CGIT Cum Labour Court, Jaipur Lok-Adalat was to be held on Sunday, 23.3.14. On 23.3.14 both the parties appeared & filed an application in Lok-Adalat to have their case disposed through Lok-Adalat on the basis of terms and conditions set out in the application. The application has been made part of the decree which reads as under:-

न्यायालय केन्द्रीय औद्योगिक न्यायाधिकरण व श्रम न्यायालय, जयपुर

शीतलदास V/s. आन्ध्रा बैंक

मु. नं. 66/04

प्रार्थना–पत्र परिवाद विड्रा करने की अनुमति प्रदान करने बाबत

श्रीमान जी,

प्रार्थना–पत्र निम्न प्रकार प्रस्तुत है–

1. यह की उक्त प्रकरण श्रीमान न्यायालय में विचाराधीन है।

No Objection (हस्ताक्षर अपठनीय) Dileep Gursahani Dy. Manager Andhra Bank Jaipur

2. यह की उक्त परिवाद मैने लोगों के बहकावे में आकर बैंक के विरूद्ध पेश किया था। मैने अप्रार्थी बैंक में कभी भी दफतरी का कार्य नही किया और कभी 240 दिन से ज्यादा कार्य नहीं किया वास्तव में मुझे अप्रार्थी बैंक द्वारा समय–समय पर केवल संविदा के आधार पर मजदूरी पर लगाया जाता था और उसकी मजदूरी भी दी जाती थी। बैंक द्वारा 5.2.2004 को सेवा मुक्त नहीं किया गया था।

Identified (Signature illegible) Advocate

3. यह की उक्त परिवाद को वापस लेने के लिए पूर्व में लिखित प्रार्थना–पत्र पेष किया हुआ है। सच्चाई यह है कि मैंने 18.10.03 के बाद बैंक मे कभी कार्य नहीं किया

23/3/2014 Andra Bank

4. यह की मैने सोच समझ कर व बिना किसी दवाब के यह तय किया है की मै बैंक के विरूद्ध अपना उक्त परिवाद नहीं लड़ना चाहता हूँ तथा लोक अदालत की भावना को ध्यान मे रख कर बिना तजबीज के परिवाद खारिज कराना चाहता हूँ।

अतः प्रार्थना–पत्र स्वीकार करमा कर बैंक के विरूद्ध मेरे मुकदमे को बिना तजबीज खारिज कर दिया जाए।

जयपुर — प्रार्थी

दिनांक 23.3.14 — हस्ताक्षर पठनीय
सितलदास
(शीतलदास)

जरिए अधिवक्ता

हस्ताक्षर अपठनीय

16. In Lok-Adalat the case was disposed in following manner:-

पत्रावली आज लोक अदालत में प्रस्तुत हुई। उभयपक्ष तथा उनके विद्वान प्रतिनिधि उपस्थित आये।

प्रार्थी पक्ष की तरफ से आवेदन इस आषय के प्रस्तुत हुई है कि बैंक के विरूद्ध मुकदमें को बिना तजबीज खारिज कर दिया जाय।

आवेदन में कहा गया है कि उसने बहकावे में आकर बैंक के विरूद्ध परिवाद प्रस्तुत किया था। वह बैंक में कभी दफतरी का कार्य नहीं किया और कभी 240 दिन से ज्यादा कार्य नहीं किया। वह केवल संविदा के आधार पर मजदूरी पर लगा था और उसी के अनुसार उसे मजदूरी दी जाती थी। यह भी कहा है कि उसने 18.10.03 के बाद कभी बैंक में कार्य नहीं किया एवं दिनांक 05.2.2004 को उसे बैंक से मुक्त नहीं किया गया था। यह भी कहा है कि उसने सोच–समझकर बिना किसी दबाव के तय किया है कि बैंक के विरूद्ध वह अपना परिवाद नहीं लड़ना चाहता है और प्रार्थना किया है कि लोक अदालत की भावना को ध्यान में रखते हुए उसका मुकदमा खारिज किया जाय।

आवेदन पर बैंक के उप प्रबन्धक द्वारा "No objection"श्अंकित किया गया है। उभय पक्ष के विद्वान अधिवक्ता ने अपने पक्षकारों की षिनाख्त की है। आवेदन की शर्तें पक्षकारों को पढ़कर सुनायीं एवॅ समझायी गयी। शर्तें स्वेच्छया प्रस्तुत की गयी प्रतीत होती हैं जिन्हें शीतल दास नें स्वीकार किया है। अतः उक्त आवेदन की शर्तों के अनुसार मुकदमें का निस्तारण किया जाता है। आवेदन दिनॉकित 23.3.14 डिकी का अंष होगी। आवेदन शीतल दास की तद्नुसार स्वीकार की जाती है एवॅ स्टेटमेंट आफ क्लेम निरस्त की जाती है।

17. The reference is answered accordingly in affirmative & against the applicant that the action of the management of Andhra Bank in terminating the services of Sh. Sheetal Das S/o Sh. Narsingh Das w.e.f. 5.2.2004 is legal & justified & the workman is not entitled to any relief.

18. Award as above.

19. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D.Act.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1921.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंघ बैक के प्रबंधतत्र के संबद्ध नियोजको और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औघोगिक अधिकरण श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 299/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2014 को प्राप्त हुआ था।

[सं. एल–12012/119/2004–आई आर (बी.–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1921.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 299/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab & Sind Bank and their workmen, received by the Central Government on 30/06/2014.

[No. L-12012/119/2004 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 299 of 2004. Reference No. L-12012/119/2004/IR(B-II) dated 29.09.2004

Dan Singh S/o Sh. Sunder Singh, Village Batolu, P.O. Sainthal, Tehsil Joginder Nagar, Mandi(HP).

...Workman

Versus

1. The Chief Manager, Punjab & Sind Bank, Zonal Office, PSB House, Model Town, Jalandhar (Punjab)-144003.

...Respondent

Appearances

For the Workman : Sh. P.K. Longia Advocate

For the Management : Sh. J.S. Sathi Advocate.

Award Passed On : 18th of February 2014.

Government of India Ministry of Labour vide notification No.L-12012/119/2004/IR(B-II)dated 29.09.2004 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the action of the management of Punjab and Sind Bank, Jalandhar for inflicting

punishment of compulsory retirement from service upon Shri Dan Singh, Ex-Peon from service w.e.f. 16.06.2003, is just and legal? If not, what relief the workman is entitled to?"

2. The workman filed claim statement and management submitted his written statement.

3. The case of the workman as per the claim statement is that he was working as a regular peon under the respondent bank. The mother of the workman died when the workman was of very small age. Workman's father due to old age was ill on 15.08.2002. Workman received telegram about the illness of his father. Workman applied for two days leave and proceeded to his village. Workmen's father was serious as such the workman informed the Bank Authorities and requested to extend his leave for one month. A telephone call was made in this regard to the Zonal Office, Jalandhar. As soon as the condition of the workman's father improved. Workman rejoined the service immediately on 05.10.2002 and continued discharging his duties. Unfortunately the father of the workman again fell ill. The situation was explained to the Bank Authorities and Bank Authorities assured the workman that there was nothing to worry and the workman proceeded on leave from 05.11.2002. On 9.12.2002 a charge sheet was stated to have been issued to the workman for remaining absent from duties without any sanction of leave. No notice of the charge sheet was ever sent to the workman. On return of the workman w.e.f. 24.12.2002 the factum of issuance charge sheet was never disclosed to the workman. He was called in the office on Chief Manager on 15.01.2003 in the presence of A.S. Arora and G.S. Sabharwal Officer of Zonal Office Jalandhar. The workman was asked to sign certain blank papers without explaining anything to him. Neither the workman was asked any question nor anything was explained to him. The alleged inquiry was conducted at the back of the workman without disclosing anything to the workman. As such the workman could not show cause to proposed punishment nor he could file his reply. Inquiry Officer never explained the contents of the report to the workman. During inquiry no witness was examine in workman's presence nor the workman was given any opportunity to cross-examine the witness. The workman was neither provided with copy of the inquiry report nor any explanation was called from the workman about proposed punishment. The punishment of dismissal in case of misconduct of remaining absent is harsh and unjustified. No reasonable opportunity was given to the workman. Workman alleged that the order of the punishment of compulsory retirement is liable to be set aside because nearly one or two instances absence and those too for valid and justified reasons cannot become a basis for awarding such punishment. The punishment of removal is excessive and disproportionate. With these allegations, workman requested that the order of compulsory retirement from service w.e.f. 16.06.2003 be set aside.

4. The management submitted his written statement the management pleaded that on 14.08.2002 the workman submitted leave application for casual leave from 16.08.2002 to 17.08.2002(two days) on the ground of most urgent work. Two day casual leave was sanctioned and the balance leave due to the workman was for one day. Workman did not report for duties after 17.08.2002 and no intimation/leave application was received from him.

5. The Chief Manager issued notice dated 24.09.2002 to the workman to show cause as to why disciplinary action be not initiated against him for absenting w.e.f. 18.08.2002. Workman reported for duties on 05.10.2002. Workman again started absenting from 05.11.2002 without intimation/ sanction of leave. Workman attended duties on 01.11.2002, 02.11.2002 was Sunday and 04.11.2002 was holiday on account of Diwali. In view of unauthorized absence from 05.11.202 coupled with earlier absence from 19.08.2002 to 04.10.2002 the disciplinary authority issued charge sheet dated 09.12.2002 that was served upon the workman on 10.12.2002 in response to charge sheet, workman submitted reply on 23.12.2002 that the workman was sick and workman also produced medical certificates. Workman also stated that the period of absence from duty for 35 days w.e.f. 05.11.2002 to 09.12.2002 was absolutely necessary for the restoration of his health and workman became ill from 10.12.2002. Workman was allowed to join duty by disciplinary authority vide order dated 23.12.2002 pending disciplinary action initiated vide charge sheet. Workman's reply was not found satisfactory disciplinary authority vide order dated 06.01.2003 appointed Sh.Amrik Singh Arora, Manager, Zonal Office, Jalandhar as Inquiry Officer and Sh. J.S. Sabharwal, I.R. Officer, Zonal Office, Jalandhar as the presenting officer to conduct the inquiry. Workman attended inquiry on 15.01.2003 and workman confirmed and accepted both the allegations leveled against him in the charge sheet. Although the workman admitted the allegations however in order to provide another opportunity to the workman the inquiry was fixed on 20.01.2003. Inquiry proceedings were explained to the workman and the inquiry was fixed on 20.01.2003 and was postponed to 22.01.2003. On 22.01.2003 the workman submitted that he already admitted all the allegations. Inquiry Officer submitted inquiry report on 10.02.2003 and holding that charges leveled against the workman were proved. Copy of the inquiry report dated 10.02.2003 was supplied to the workman. Workman did not submit his comments against the finding of the inquiry officer. The disciplinary authority issued show cause notice to the workman for the proposed punishment. Disciplinary authority also informed to the workman to appear before him for the purpose of personal hearing. Workman did not avail the opportunity. Disciplinary authority inflicted the following punishment "Shri Dan Singh-Peon, Zonal Office, Jalandhar, be compulsorily retired/removed from service/

discharged with superannuation benefits as would be due otherwise at that stage and without disqualification of future employment."

6. In evidence, workman submitted his affidavit and filed photocopies of medical certificate and on behalf of management. Sh. Brij Mohan Kaura, Officer Punjab & Sind Bank, submitted his affidavits. Photocopies of the documents were also filed. Workman Dan Singh and management witness Brij Mohan Kaura were cross-examined before this tribunal.

7. I have heard both the parties and perused the entire record carefully.

8. So far the fairness of inquiry is concerned. It would be pertinent to mention the order dated 13.07.2010, passed by the then Presiding Officer.

> "As per the provisions of Industrial Disputes Act, if any enquiry is found to be against the rules and in violation of the principle of natural justice, it is the duty of this Tribunal to afford the opportunity to conduct a fresh enquiry. The fresh enquiry may be conducted by the Tribunal or by the enquiry officer appointed by the disciplinary authority. Both of the parties have agreed to conduct the enquiry by this Tribunal. I am also of the view that considering the manner enquiry was conducted against the workman, it will be proper to quash the enquiry and to afford the management an opportunity for proving the charge afresh before this Tribunal. Accordingly, the inquiry proceedings and punishment awarded to the workman are set-aside. The status of the workman during the enquiry to be conducted by this Tribunal shall remain as such. Management is afforded the opportunity to conduct the enquiry of the charge which was leveled the workman on 09.12.2002. The management is afforded the opportunity to lead the evidence base on the charges leveled against the workman on 09.12.2002. Considering the nature of the enquiry and the proceedings before this Tribunal, it is hereby made clear that proceedings of this case shall be conducted as per the mechanism adopted by the Tribunal, and the reference shall be answered within two months from today. The evidence of workman shall also be recorded on the same day after recording the evidence of the management. List the case on 18.08.2010 for evidence of the management and the workman."

9. Before this Tribunal, management's witness Shri Brij Mohan Kaura. IR Officer Zonal Office, Jalandhar, filed his affidavit, in his affidavit, dated 18.08.2010 stated that the total period of absence of the workman was 277 days. This has also mentioned in his affidavit that no ordinary leave is due to an employee. Competent authority may grant extra ordinary leave and no pay and allowances are admissible during the period of extra ordinary leave and the period spent on such leave was not count for increment. This has also been mentioned in affidavit that extra ordinary leave shall not exceed three months on any occasion and 12 months during the entire period of service. From the perusal of this affidavit it is also clear that the finding of inquiry officer were sent to the workman through registered cover letter. Workman did not submit comments against the finding of the inquiry officer and disciplinay authority after considering record pass the order of punishment "Shri Dan Singh-Peon, Zonal Office, Jalandhar, be compulsorily retired/removed from service/discharged with superannuation benefits as would be due otherwise at that stage and without disqualification of future employment." Workman did not avail the opportunity of personal hearing also. This has also been mentioned in the affidavit that the workman did not avail the remedy of appeal against the orders passed by the disciplinary authority.

10. Workman's contention is that the workman could not attend the office due to his father's illness and therefore workman himself got ill. Workman also submitted medical certificate about his illness.

11. Considering all the facts and circumstances and looking to the fact that the workman is a class four employee with less educational background, so he could not avail the remedies as stated in the affidavit. Considering the circumstances and facts of the case it is held that in departmental inquiry workman was not provided with sufficient opportunity to defend himself. The charges leveled against workman were regarding his absence from duties. This is not a case where workman embezzled. The punishment awarded for absence from duties is very harsh and deserves to be set aside. Consequently considering all the facts and circumstances the punishment awarded to the workman is set aside and the workman be reinstated subject to conditions that workman will not get any back wages during his absence from duty, workman will be placed at the lowest of his pay scale and he shall not be given any sort of seniority and he shall also not be given any increment or leave encashment benefits. Management is directed to reinstate the workman within one month from the date of the publication of award.

12. With these findings the reference is answered accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for further necessary action.

Chandigarh.

18.02.201

S. P. SINGH, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1922.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय–1, चंडीगढ़ के पंचाट (संदर्भ संख्या 80/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30/06/2014 को प्राप्त हुआ था।

[सं. एल–12012/26/2007–आई आर (बी.–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1922.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2007) of the Cent. Govt. Indus. Tribunal–cum-Labour Court-No.1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 30/06/2014.

[No. L-12012/26/2007-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 80 of 2007, Reference No. L-12012 26/2007-IR(B-II) dated 04.07.2007.

Sh. Ravinder Kumar Nanda, H.No.454, Urban Estate, Phase-II, Jalandhar (Punjab).

...Workman

Versus

1. The Regional Manager, Punjab National Bank, The Mall, Ferozepur City, Ferozepur.

...Respondent

Appearances :

For the Workman : None

For the Management : Sh. N.K. Zakhmi Advocate

Award Passed On : 03-03-2014

Government of India Ministry of Labour vide notification No. L-12012/26/2007-IR(B-II) dated 04.07.2007 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the action of the management of Punjab National Bank, Ferozepur in terminating the services of Shri Ravinder Kumar Nanda, Ex-clerk-cum-Cashier w.e.f. 28.02.1991, is legal and justified? If not, what relief the workman is entitled to and to what extent?"

2. On receipt of reference, notices were issued to the parties. Workman appeared and filed claim statement stating therein that he was appointed as Clerk-cum-Cashier with the management and there was no complaint regarding his work and conduct. It is pleaded by the workman that on 07.07.1986 a charge sheet was served upon him and there after inquiry proceedings were dropped vide telegram dated 12.06.1989. It is pleaded by the workman that he was served another charge sheet dated 13.06.1988 similar to the charge sheet dated 07.07.1986. Therefore the subsequent charge sheet is neither proper nor legal. The workman submitted an application bringing the above facts to the management to withdraw the charge sheet, but he did not receive any reply. Therefore the workman was denied the opportunity to submit the reply to the charge sheet. The workman received a letter from Senior Regional Manager, Regional office Ferozepur requiring the workman to attend the inquiry in connection with the charge sheet dated 31.05.1988. There was no charge sheet of dated 31.05.1988. Therefore the workman did not appear again vide letter dated 07.03.1989, the workman again informed that inquiry is regarding charge sheet dated 13.08.1988. Mr. R.P. Gupta was asked to conduct the inquiry and first date was fixed on 05.04.1989 which was received by the workman on 05.04.1989. The workman informed Mr. R.P. Gupta, inquiry officer that he was biased against the workman. The workman submitted representation for providing the assistance of the advocate and result of charge sheet dated 07.07.1986, for change the inquiry officer, for staying the inquiry proceedings in view of the pending criminal proceedings, enhancement of subsistence allowance and payment of subsistence allowance. The workman was not given reply to his application, and management in violation of principal of natural justice rushed through the departmental inquiry with a pre- determined mind. He was not supplied the list of witnesses, description of documents. The inquiry was biased against the workman asmuch as he even refused to receive the application of the workman. The inquiry officer conducted the inquiry Ex-parte illegally and he was not supplied the list of witnesses or documents. The workman further pleaded that he requested the inquiry officer on 29.06.1989 to recall the departmental witnesses for cross-examination and to call Mrs. Jaswinder Kaur and Sh. M.G Kapoor, but the inquiry officer accepted the request regarding supply of copies of documents but illegally rejected the applicant request for calling Mrs. Jaswinder Kaur and M.G. Kapoor. Due to illness of applicant he could not attend the inquiry on 11.7.1989 that he informed the

inquiry officer about his illness vide telegram dated 10.07.1989. The workman could not recover from sickness and workman sent the medical certificate to the inquiry officer and next date of inquiry was as on 31.07.1989. On 31.07.1989, no witness of the management was present and the workman was asked to produce the defence evidence from 08.07.1989. On this stage the workman wanted to submit an application in the inquiry but inquiry officer refused to produce the same. The inquiry officer was also refused to summon Jaswinder Kaur and M.G. Kapoor and asked the workman to produce them at his own level and responsibility and inquiry was adjourned to 25.08.1989. On 25.08.1989 the workman could not produce M.G Kapoor and Jaswinder Kaur due to the reason that she was out of station. Inquiry officer did not exceeded to the request of the workman to call Mr. Jaswinder Kaur and M.G. Kapoor officially and close the defence evidence and adjourned the case to 02.09.1989 for submitting the written brief. The workman could not submit the written brief on 02.09.1989 as he was not supplied the copies of relevant documents by the officer. A show cause notice was issued to the workman proposing the penalty of dismissal from service. It is pleaded by the workman that inquiry report/ finding was absolutely biased at the point in issue. The inquiry officer did not apply his mind and the workman was not given opportunity to defend himself. As the inquiry officer in violation of principal of natural justice did not call the most material and relevant witnesses that is Mr. Jaswinder Kaur and M.G. Kapoor and workman was not given opportunity to cross-examine them. The punishment order dated 06.09.1990 dismissing the workman from service is illegal and it is requested by the workman that the same may be set aside and quashed and the workman may be reinstated in service with all consequential benefits and continue of the service with full back wages.

3. The management filed written statement primary objection has been taken that the workman was guilty of serious act of misconduct while working as clerk-cum-cashier in the branch office of the management at Ferozepur Cantt. He was served with the charge sheet which is as under:-

1. On 09.03.1984, you fraudulently got cancelled draft No.5/84 dated 20.02.1984 for Rs.350/- favouring Capt. N.S. Bawa drawn on BO: Nasik Road, purchased by Mrs. Jaswinder Kaur and received payment in your SF A/c 22506.

2. One Mr. Madan Gopal holder of RD A/c No.3987 gave you Rs.200/- on 10.10.1984 and another Rs.200/- In Nov.1984 for deposit in his RD A/c No.3987, but you never deposited these amounts in the bank. You simply made entries in his RD passbook and also put your initials in the prescribed column. As such, you pocketed that amount cheated a valuable bank customer by misusing your position as an employee of the bank.

4. Inquiry officer was appointed and the workman was duly informed for the different dates and proceedings were adjourned from one date to another. The workman was given sufficient opportunity to defend himself during inquiry. But the workman failed to attend the inquiry proceedings. He was duly informed about the appointment of inquiry officer who issued notice for appearing for the inquiry for 12.04.1989. On the request of the workman the inquiry proceedings adjourned for the reason that workman wanted sometime to engage his defence representative. He was issued notice by the inquiry officer for appearance on 13.06.1989, the workman again requested date and playing delay tactics the witnesses of the management were present in the inquiry proceedings. He was asked by the inquiry officer to cross-examine the witness. The workman walked out of the chamber of the inquiry officer and he refused to sign on the inquiry proceedings also. As there was no alternative the inquiry was conducted Ex-parte, and inquiry proceedings were postpone to 12.04.1989 and copy of inquiry proceedings was sent to the workman.

5. The workman was advised time and again by the inquiry officer to appear and to bring his defence representative and also send his list of witnesses but the workman resorted to delaying tactics each and every time. When he was asked to cross-examine management witness, he asked for a date without any reason. On many dates management witnesses were present but the workman did not turn up and sent telegram. Still the inquiry officer provided him opportunity to appear in inquiry and defend him in the inquiry proceedings. For example on 15.07.1989 the management witnesses were present but the workman neither turn up nor sent any intimation for his absence nor submitted any medical certificate. After waiting, the presenting officer requested the inquiry officer to start the inquiry. Still the inquiry officer asked the presenting officer to wait for some more time and after a long time the inquiry officer concluded the evidence of the management. Many times the workman was told categorically and specifically but the workman again resorted to the same tactics for seeking date and to avoid the inquiry proceedings. When inquiry officer submitted his report to the disciplinary authority, the disciplinary authority ordered for reopening of the inquiry with the direction that the workman may be given an opportunity to cross-examine the management witness and to produce his defence witness. In accordance with the order of the disciplinary authority the inquiry was restarted and workman was informed vide letter dated 24.01.1990 but the workman again did not turn up. Still the inquiry officer adjourned the proceedings to 19.02.1990, again the workman did not turn up. Still the inquiry proceedings

adjourned to 07.03.1990. On this date also, the workman did not turn up and sent a telegram about his illness and having no alternative except to accede the request of the workman, the proceedings was adjourned to 21.03.1990, again the workman did not turn up. The inquiry proceedings adjourned on 05.04.1990 and the workman was allowed to cross-examine the witness of the management. In this process workman examined the witness of the management on 20.04.1990. On further dates the workman failed to turn up and proceedings were fixed on 20.06.1990 when the workman despite various opportunities failed to produced defence witnesses. The defence of the workman was closed and he was asked to give written brief. The workman failed to give any written brief and inquiry officer submitted his findings to the regional manager who issued show cause notice proposing the punishment of dismissal from service. He was also given personal hearing and after taking into consideration of the facts and circumstances, the disciplinary authority confirm the punishment to dismissal from service vide order dated 06.09.1990. The appeal of the workman was also decided after considering all the record and dismissed the appeal vide order dated 28.02.1991. It is submitted by the management that the inquiry was conducted in fair and proper manner and he was given so much of opportunities but each and every time the workman played delaying tactics and still after conducting the inquiry according to the principal of natural justice punishment was imposed by the disciplinary authority by giving show cause notice, on each and every step the management complied with the principal of natural justice. He was given personal hearing by the disciplinary authority and also by the appellate authority. It is further submitted by the management that the bank has lost confidence in the workman Ravinder Kumar Nanda. It is prayed that as the inquiry was conducted in fair and proper manner, in accordance with the principles of natural justice, punishment is imposed in proportionate to the gravity of misconduct of the workman. Therefore the workman is not entitled to any relief and the reference deserves to be dismissed.

6. From the perusal of the record it appears that the workman firstly filed a civil suit No.540-1/1-2-93/9399 in the court of Sub Judge Junior Division Ferozepur, for declaration to the effect that order dated 06.09.1990 passed by Regional Manager, Punjab National Bank, Ferozepur, imposed the penalty of dismissal from service and order dated 28.02.1991 passed by Zonal Manager wherein appeal of the complainant was dismissed. This Civil Suit was decided vide order dater 29.07.2002 and the suit was dismissed with cost. The workman filed civil appeal in the Court of Additional District Judge Fast Track Court, Ferozepur, which was decided on 03.04.2003 and the suit was decreed in favour of the workman. Aggrieved by this judgment of Additional District Judge, Fast Track Court, Ferozepur, the management filed regular second appeal No.4285 of 2003 in the Hon'ble High Court of Punjab & Haryana. Hon'ble High Court passed the following order:-

> "The judgment of the lower appellate court is set aside. It is clarified that the plaintiff would be free to avail of his remedy under the Industrial Disputes Act. 1947, where his claim would be considered without being influenced by any findings recorded by the civil courts in these proceedings."

7. In view of the above the present reference was referred by the Ministry taking into consideration of the orders of the Hon'ble High Court, as the liberty was given to the workman to avail his remedy under the I.D. Act. In so far as the inquiry is concerned, this Tribunal on 23.03.2010 passed the following orders:-

> "Even though the recording of evidence is not mandatory but if the circumstances of the case so demanded parties can be allowed to adduce evidence even on fairness of enquiry. This tribunal should afford this opportunity for the ends of justice. Accordingly, the parties are allowed to lead evidence on fairness of enquiry".

8. Both the parties examined witnesses in support of their respective case. The workman examined himself as WW1 wherein he tendered his affidavit as Exb.W1 and documents Exb.W2 to W10. The management examined Satbhushan Gupta, Senior Manager, Circle Office, Punjab National Bank, Bhathinda, who filed his affidavit M1 and complete inquiry proceedings as Exb.M2. Both the witnesses have been cross examined by the rival parties.

9. The claim of the workman is that he was not afforded proper and adequate opportunity during departmental proceedings conducted against him. The workman was denied the opportunity to cross-examine the witnesses of the management and to adduce his defence. The inquiry officer was biased and he conducted ex-parte proceedings against him. The inquiry officer failed to summon Jaswinder Kaur and M.G. Kapoor as his witnesses who were crucial witnesses to the facts and circumstances of the case. Therefore, it is requested by the workman that in the facts and circumstances of the case, as the inquiry was not conducted fairly and properly and in accordance with the principal of natural justice, the same may be declared as void and punishment imposed upon the workman may be set aside and the workman may be reinstated in service with full back wages & all consequential relief. On the other hand the claim of the management is that the workman was given ample opportunity during departmental proceedings. The workman deliberately and intentionally avoided the inquiry and tried to prolong the same. He was afforded full opportunity of defence during inquiry. As far as his contention that he was not allowed to produced Jaswinder Kaur and M.G Kapoor is concerned. The

management pleaded that full opportunity was given to the workman to produce his witnesses which he wanted to produce but the workman played delaying tactics and failed to produce those two witnesses on one pretext or the other. The management prayed that as the workman was given full opportunity during inquiry, the inquiry may be held as fair and proper and the punishment imposed upon the workman is commensurate to the misconduct of the workman. The workman was also given personal hearing by the disciplinary authority and the workman availed the same. The workman was also given personal hearing by the appellate authority which he availed. It is prayed that there is no merit in the reference and the reference deserves to be answered against the workman.

10. From the perusal of the evidence on record, it is revealed that workman during cross examination admitted that he received a letter dated 29.03.1989 in which inquiry was fixed for 05.04.1989 and workman did not appear before the inquiry officer as he received the letter in the afternoon. From the perusal of the record of inquiry it appears that the workman was informed about the date of inquiry through registered letters. On 05.04.1989, the workman wanted some time to engage his defence representative vide his letter dated 08.04.1989. A notice was issued to him for 13.06.2009 but he again requested date to arrange his representative. On that day the witness of the management was present and the workman was asked to cross examine the management witness. The workman walked out of the chamber of the inquiry officer and refused to sign on inquiry register also. The inquiry officer conducted the inquiry Ex-parte. The inquiry proceeding was postponed to 02.06.1989 and a copy of the inquiry proceedings was sent to the workman, and he was advised to attend the inquiry proceedings. Next date was fixed on 29.06.1989 and he was asked to bring his defence representative and send his list of witnesses, and he was given another opportunity to cross examine the management witness on 07.07.1989. Again he walked out from the inquiry proceedings and refused to cross examine the management witness. Still he was given another opportunity and inquiry proceedings were adjourned to 11.07.1989.

11. From the inquiry proceedings, it is revealed that he was given so many dates to cross examine the management witness and to bring his own witness in defence but the workman played delaying tactics each and every time on the crucial date of hearing in the departmental proceedings.

12. In cross examination he admitted of having received telegrams and letters for inquiry but on one pretext or the other he was seeking adjournment and delayed the inquiry. The disciplinary authority set aside the order of the inquiry officer to close the inquiry and allowed the workman to cross examine the witness and to produce his own witness in defence. In cross examination the workman admitted of having received the proceeding of inquiry. He also admitted that he received the report of the inquiry officer along with the show cause notice and he also admitted that he appeared before the disciplinary authority on 06.09.1990 incompliance of the opportunity of being heard given to him he also filed appeal which was dismissed and the was afforded the personal hearing in appeal also. From the above it cannot be said that the workman was not given any opportunity to cross examine management witness and to lead his defence during the departmental proceedings. He was given so many opportunities during departmental proceedings but he each and every time played tactics for delaying the inquiry. Therefore it is held that inquiry was conducted with in fair and proper manner and the workman was given full opportunity to defence and he was also given the opportunity to cross examine the management witness and the inquiry was conducted in accordance with the principles of natural justice.

13. So far as the question of quantum of punishment is concerned, the workman was held guilty of the charges of miss-appropriation fraudulently cancellation of draft for Rs.350/- and received the amount in his account and receiving from one Madan Gopal who give him Rs.200/- for deposit in his R.D account. He made entry in the pass book and pocketed that amount which is serious misconduct. The punishment was awarded to the workman after careful consideration of the facts & circumstances by the disciplinary authority and appellate authority rightly rejected his appeal. Taking into consideration the gravity of misconduct, no interference is warranted in the quantum of punishment by this Tribunal.

14. In view of the discussion made in the earlier paras, it is held that action of the management in terminating the services of Sh.Ravinder Kumar Nanda, Ex-clerk-cum-Cashier w.e.f.28.02.1991 is legal and justified and the workman is not entitled to any relief. The reference is answered accordingly.

15. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for further necessary action.

Chandigarh
03-03-2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1923.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 34/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2014 को प्राप्त हुआ था।

[सं. एल–12012/104/2006–आई आर (बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1923.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2007) of the Cent. Govt. Indus. Tribunal–cum-Labour Court No.1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab and Sind Bank and their workmen, received by the Central Government on 30/06/2014.

[No. L-12012/104/2006 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 34 of 2007, Reference No. L-12012/104/2006-IR(B-II)dated 04.06.2007.

Sh. Baljinder Singh, S/o Sh. Pal Singh, R/o V&PO Begowal, Distt.Ludhiana, Ludhiana.

...Workman

Versus

1. The Zonal Manager, Punjab & Sind Bank, Zonal Office, Nobal Enclave, Bhai Bala Chowk, Ludhiana-141001.

...Respondent

Appearances :

For the Workman : Sh. P. K. Longia, Advocate

For the Management : Sh. J.S. Sathi, Advocate

AWARD

Passed on 4.3.2014

Government of India Ministry of Labour vide notification No.L-12012/104/2006-IR(B-II)dated 04.06.2007 has referred the following dispute to this Tribunal for adjudication**:**

Term of Reference:

> "Whether the action of the management of Punjab & Sind Bank, in terminating the service of Shri Baljinder Singh, Ex-peon w.e.f. 03.03.2003 without following the prescribed procedure under Section 25F of the Industrial Dispute Act, 1947 is illegal and unjustified? If so, to what relief the concerned workman is entitled to and from which date?"

2. Workman in his claim statement submitted that he joined the respondent bank on 05.10.1996 on the post of peon and he was appointed by the Branch Manager against two sanctioned post of peon and he has completed more than 240 days. He made several representations for regularizing of his services. Workman continuously works for more than six years and when the workman asked to the branch manager to pay him prevailing DC rates. The branch manager denied and he was not allowed to enter in the bank w.e.f. 03.03.2003. No notice or retrenchment compensation was given to the workman at the time of his disengagement on 03.03.2003. The management appointed another person in his place and violated the Section of 25F of the ID Act, 1947. The workman prayed that as he has worked continuously with the management for more than six years and he completed 240 days services in every calendar year. The management fails to comply with the Section 25F of the ID Act, and no notice, pay in lieu of one month notice and retrenchment compensation was given to him at the time of his disengagement on 03.03.2003. The workman prayed that he may be reinstated in services with full back wages.

3. The management filed written statement, primary objection has been taken, that the workman intermittently worked during 1996 to 2003 but he did not complete 240 days of service in twelve months. He was not required to mark presence in the attendance register. It is further submitted that a person engaged unauthorized has no right to continue in service. The engagement of the workman was backdoor entry therefore provisions of ID Act, 1947 are not applicable. On merits it is pleaded by the management that no appointment letter was issued to the workman and no proper and fair procedure was followed while engaging him and thus it is a backdoor entry. The workman did not render 240 days service, therefore provisions of Section 25F are not applicable. No fresh hand was recruited. It is prayed that reference of the workman has no merits to stand, therefore the same may be answered against workman.

4. In evidence, workman filed his affidavit, he also placed on record general charges account register for the year 1998, 2001 and 2002. The management in evidence filed the affidavit of Sh.H.S Dugal, Ex.M1, along with a letter dated 01.05.2006 Ex. as marked 'A'.

5. The workman in his cross examination stated that no application was moved by him for any post. He was interviewed by the manager concerned. It is also stated by the workman in the cross examination that after his termination Surjit Singh and Mehga Singh were engaged in the same branch. He also denied the suggestion that the workman left voluntarily and bank has not terminated his service. The witness of the management Sh.H.S.Dugal admitted in his cross examination that workman was engaged on 05.10.1996 and disengaged verbally on 03.03.2003. No attendance was maintained but numbers of days were calculated on the basis of payment voucher. It is also admitted by the witness of the management that no retrenchment compensation was paid to the workman. He also admitted that post of peon is still available and one Mehnga Singh was part time sweeper whose services were regularized on part time basis.

6. I have heard the parties and gone through the record. The claim of the workman is that he was engaged on 05.10.1996 and worked upto 03.03.2003 continuously and completed 240 days of service in every calendar year during six years. He also placed on record the general charges account register according to which the management witness was admitted to be genuine. His services were terminated on 03.03.2003 without following the mandatory provisions of Section 25F of the ID Act, 1947. The management also violated Section 25F on the basis of which the workman prayed that he may be reinstated in service with full back wages.

7. On the other hand, the claim of the management is that though workman admittedly worked during the period 05.10.1996 to 03.03.2003, but it is the plea of the management that workman did not complete 240 days in any of the calendar year from 05.10.1996 to 03.03.2003. Therefore, provisions of the ID Act, 1947 are not applicable.

8. In so far as the appointment of the workman is concerned, workman himself admitted that no application was moved by him for any post. He also admitted in his statement that no appointment letter was issued. He was paid daily wages @ Rs. 30 per day. He also admitted in his statement that no termination order was passed. From the statement of witness of the management Shri H.S. Dugal, it is clear that workman was engaged on 5.10.1996 and was disengaged verbally on 3.3.2003. The witness of the management also admitted that there was no attendance sheet and number of days were calculated by the office on the basis of payment vouchers. The general charges account payment register from 1996 to 2003 which are annexed with the file are official record which he believe to be genuine. Management's witness Shri Dugal also stated in his statement that Mehanga Singh was part time sweeper has been regularized on part time basis.

9. From the above statements of the witness it is clear that workman was engaged on daily wages basis and worked with the management as such for the period from 5.10.1996 to 3.3.2003 intermittently. He was not appointed against any sanctioned post and due procedure was not followed by the management at the time of his engagement as no retrenchment compensation was given to him and he was also not given one month notice or pay in lieu of notice. As he was working on daily wage basis w.e.f. 5.10.96 to 3.3.2003, therefore, he has no right to the post under these circumstances and cannot be ordered to be reinstated. The end of justice would be met if the workman is allowed compensation in lieu of his reinstatement. In view of the above, since the workman was working on daily wage basis @ Rs. 30 per month,, therefore, compensation amounting to Rs. 30000 would be adequate in the given circumstances. The management is directed to pay Rs. 30000 to the workman within one months from the date of publication of the award. The referenced is disposed off according. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

03-03-2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1924.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैक के प्रबंधंतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली–1, के पंचाट (संदर्भ सं. 45/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2014 को प्राप्त हुआ था।

[सं. एल–12011/35/2003–आई आर (बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1924.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2011) of the Cent. Govt. Indus. Tribunal–cum-Labour Court No.1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 30/06/2014.

[No. L-12011/35/2003 - IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 45/2011

1. The President,
   All India Bank Deposit Collectors' Federation,
   TKV Memorial, P.B.No.3673,
   College P.O. Mahakavi Bharathiyar Road,
   Ernakulam-682 035 (Kerala).
2. The Organizing Secretary,
   All India Bank Deposit Collectors
   Workmen Union ® 772,
   # 1439, Renukacharya Temple Street,
   K. P. Agrahara, Mysore-570 024.

...Workmen

Versus

1. The Officer on Special Duty,
   Indian Banks' Association Local Chapter,
   Punjab National Bank,
   C/o P.N.B. ECE House, 2nd Floor,
   K. G. Marg, New Delhi-110 001.
2. The Chairman,
   Indian Banks' Association,
   Stadium House 6th Floor,
   Block 3, Veer Nariman Road,
   Mumbai -400 020.

...Managements

ORDER

An industrial dispute was referred to this Tribunal for adjudication, vide order No.L-12011/35/2003-IR(B-II), New Delhi, dated 06.08.2003. An award was passed in the matter on 07.10.2013. Inadvertently, a clerical mistake has occurred in the said award.

2. Now, an application has been moved by the management detailing therein that Tribunal has divided the bill/tiny deposit collectors into Area A, B and C as per the places they operate, where a bill deposit collector in area A would collect a minimum of Rs.5 lacs per month, in area B Rs.4 lacs per month and in area C a sum of Rs.3 lacs per month which was wrongly mentioned as the collectors operating in area A, B and C would collect Rs.3, Rs.4 and Rs.5 lacs, in the award. A request has been made to make necessary correction in the award, in that regard.

3. Rule 28 of the Industrial Disputes(Central) Rules, 1957 empowers this Tribunal to correct any clerical mistake or error arising from an accidental slip or omission in any award or order issued in that regard. For sake of ready reference, aforesaid rule is extracted thus:

> "The Labour Court, Tribunal National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues".

4. Clerical error can be defined as an error in a document which can only be explained by considering it to be a slip or mistake of the party preparing or copying it. Literally an error is said to be "clerical" where it is made by a clerk or some subordinate agent, but actually, it means an error committed it the performance of clerical work, whether by the Court, the draftsman of the Act or by the clerk. It is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion. Clerical error is in the nature of an inadvertent omission or mistake. The term "clerical error" which is amendable nunc pro tunc is distinguishable from a "judicial error" which can be corrected only on review or an appeal. Reference can be made to precedents in Rosamma Punnose (AIR 1958 Ker. 154) and Mansha Ram L.Jagdish Rai (AIR 1962 Punj. 110).

5. Accidental slip occurs when something is wrongly put in by an accident and an accidental omission occurs when something is left out by accident. The expression "accidental slip" as occurring in section 152 (new) of the Code of Civil Procedure was construed by the Federal Court in Sachindara Nath Kolya (5 DLR 68), wherein it was observed as a follows:

> "It needs to be stressed that the keyword in the relevant phrase is "accidental" and it qualifies "omission" also, with the result that the procedure provided by section cannot be used to correct omission, however erroneous, which are intentional, not indeed in the sense of conscious choice, for no court, is supposed to commit an error knowing it to be such, but in the sense that the Court meant not to omit what was omitted".

6. Apex Court in Tulsipur Sugar Company Ltd. (1969 (2) SCC 100) had occasion to consider correctional jurisdiction of the Labour Court constituted under the UP Industrial Disputes Act, 1947. In that precedent the Apex Court made reference to the provisions of Section 152 of the Code of Civil Procedure and rule 28 of the Rules and announced that power of correction of error is a limited one, which can be exercised only to cases where mistake, clerical or arithmetical or an error arising from an accidental slip or omission had occurred. It was ruled therein that this power is limited only to cases where clerical or arithmetical mistake or errors arising from an accidental slip or omission have occurred.

7. After ascertaining the scope of powers of correction of errors available to this Tribunal, now it would be ascertained as to whether the proposition that the collectors operating in area A, B and C would collect Rs.3, Rs.4 and Rs.5 lacs as mentioned in the award, was on account of conscious choice of the Tribunal. Answer lies in negative. It was so recorded on account of accidental mistake. This Tribunal is vested with powers to correct the accidental mistake. Accordingly, it is ordered that 'the collectors operating in area A, B and C would collect Rs.3, Rs.4 and Rs.5 lacs per month respectively' in the award may be read as 'the collectors operating in area C, B and A would collect Rs.3 lac, Rs.4 lac and Rs.5 lac per month respectively' wherever it occurs. Ordered accordingly. The appropriate Government may be communicated of the correction, so made in the award, for publication.

Dr. R. K.YADAV, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1925.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट

(संदर्भ संख्या 26/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल–20012/109/2011–आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1925.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 26/2012 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/109/2011 - IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE NO. 26 OF 2012

PARTIES : The General Secretary,
Jharkhand Janta Mazdoor Union,
Nutundih, PO : Jagjivan Nagar,
Dhanbad.

Vs.

General Manager,
Lodna Area, of M/s BCCL,
PO:Lodna,
Dhanbad.

Ministry's Order No. L-20012/109/2011-IR (C-I) dt. 22.3.2012.

APPEARANCES :

On behalf of the workman/Union : : Mr. Pintu Mandal, Union Representative

On behalf of the Management : Mr. D. K.Verma Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 20th May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/109/2011-IR (C-I) dt. 22.3.2012.

SCHEDULE

"Whether the action of the Management of Bararee Colliery of M/s BCCL in dismissing Sh.Santosh Rabidas, Ex.M/Loader from the service of the Company vide order dt.14.03.2011 is fair and justified ? To what relief the concerned workman is entitled?"

On receipt of the Order No. L-20012/109/2011-IR (CM-I) dt. 22.3.2012. of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 26 of 2012 was registered on 09.04.2012. and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/Advocates appeared in, and contested the case.

2. The case (with the I.D.Case No 9/2011 u/s 2 A of the I.D, .Act, 1947) of the workman Santosh Rabidas as sponsored by the Jharkhand Janta Mazdoor Union, Dhanbad, is that on his appointment by the General Manager of Bhowra Area as per the letter No.G.M.-PER/XI/Temp/Rect. (M/L) 355-59 dt.27.12.1986/6.1.1987, he joined the Bhowra Area on 22.1.1987, and was posted to Jealgora Colliery of Bhowra Area. Later on his transfer to Bararee Colliery which merged with Lodna Area, he was working as Miner Loader there satisfactorily The workman fell ill, so he had accordingly reported to the Management as per his application dt.16.9.2006 for grant of his sick leave. Again he reported to the Project Officer of Barora colliery for extension of his sick leave as per his application dt.6.3.2007. He got treatment from Dr. M. Prasad, Loharkulhi, Saraidhella from 14.9.2006 to 8.12.2007. On recovery from illness as per the Doctor's Certificate of his fitness for duty on 9.12.2007, the workman reported with the Medical Certificate to the Personnel Manager of Bararee Colliery for resumption of duty, but he was not allowed to do so, Even the demand of the Union to that effect resulted in the issuance of the chargesheet to the workman on 28.03.2008 for the misconduct under clause 26.1.1 the Certified standing Orders. Even on his satisfactory reply to the chargesheet and his application on 20.9.2010 for resuming his duty, the Management neither allowed his duty nor ordered for payment of subsistence allowances for keeping him out of duty during the pendency of the department enquiry as per the Certified

Standing Orders. Lastly the workman had submitted his application to the Management on 29.12.2010 for his duty.

The Project Officer of Bararee Colliery of M/s BCCL illegally dismissed the workman as per the dismissal letter no Bar/2011/230 dt.14.3.11.On the report of the workman about it, the Union raised the Industrial Dispute before the A.L.C. in which the workman learnt of his dismissal but the failure of the conciliation proceeding due to the adamant attitude of the Management resulted in the reference for adjudication.

Further alleged by the Union that after knowing of the dismissal of the workman, the union filed a rejoinder with a prayer for changing the subject matter of the present I.D. as his dismissal. The Management conducted the domestic enquiry without giving an appropriate opportunity to the workman for his defence according to the principle of natural jsutice, and dismissed him illegally as the Authority being below the rank of the Appointing is not competent to pass the dismissal order as per clause 27.2.6 of the Certified Standing Oders.The misconduct has not been proved in the enquiry. The punishment of dismissal is dispropetionate.So the workman is entitled to reinstatement with full back wages.

The Union for the workman in its rejoinder has categorically denied all the allegations of the O.P./ Management as incorrect.

3. Whereas challenging the maintainability of the reference the contra pleaded case of the O.P./Management with the specific denials that the applicant workman posted as Miner Loader at Bararee Colliery began to unauthorizedly absent from his duty w.e.f. 10.9.2006 which is misconduct under clause 26.1.1. of the Certified Standing Orders of the M/s BCCL, for which he was issued the chrgesheet dt.28.3.2008 he had got on 2.4.2008. He had also submitted his explanation dt.24.4.2008. Finding his explanation unsatisfactory, the Disciplinary Authority appointed the Enquiry Officer, who conducted the domestic enquiry in presence of the workman in accordance with the principle of natural justice, and submitted his enquiry report, holding him guilty of the charges levelled against him in the chargesheet. At the second Show Cause Notice dt.28.2.10, the workman submitted his reply to it. Having considered his second Show reply unsatisfactory, his three years past record of attendances 72, 78, and Nil in the years 2003 to 2005 respectively, and has habitual absentism,the Disciplinary Authority dismissed him as per the dismissal letter dt.14.3.2011 which is legal just and proportionate. So the applicant is not entitled to any relief. The O.P./Management sought for permission to substantiate the charge, if the enquiry found unfair at the preliminary issue.

FINDING WITH REASONS

4. In the instant case, on the acceptance of Mr Pintu Mandal, the Union Representative for the workman about the domestic enquiry as fair and proper as per his petition dt.6.11.2013. The Tribunal as per Order No15 dt.20.12.13 has held the enquiry indisputably fair; consequently the photocopies of the documents of both the parties on consensus have been marked their Exhibits for proper appreciation of the main issue.

Mr. Pintu Mandal, the Union Representative for the workman has submitted that the workman was initially appointed as U/G Minder/Loader in Bhowra Area of the BCCL as per the Management's letter dt.27.12.1986/6.1.1987 and accordingly, he was issued his Identity Card and his Service Excerpt dt.5.5.1997 by the Management (Extt. W.2 and W.3 respectively) ; on his joining on 22.1.1987 he was posted at Jeenagora colliery, Bhowra Area. Consequent upon his transfer to Bararee Colliery, he was working as M/Loader. When he fell sick, he had accordingly reported of his illness and treatment by the Private Doctor to the Project Officer concerned through his letter as per his letter (Extt.W.4 & 4/1) through posts (U.C.P.).After recovery he also applied to the Personnel Manager of the Colliery along with the photocopies of the Medical Certificate(Ext.W.4/2-3 respectively) on 10.12.2007 for resumption of his duty, and he had also informed the Management of submitting his reply dt.24.4.2008 to the chargesheet (Ext.W.6 & 5 respectively).Further it has been submitted on behalf of the workman that in spite of explaining the reasonable cause of his absence due to his sudden illness, the workman was dismissed from his service as per letter dt. 14.3.2011 (Ext.W.7) after holding enquiry highly belatedly; the dismissal of the workman for his absence is not appropriate, whereas Mr. D. K. Verma, the Ld. Counsel for the O.P./Management has to contend that since the workman is a regular and habitual absentee so after due enquiry into it and the 2nd Show Cause dt.28.12.2010 (Ext.M.1) he was dismissed from his service with immediate effect as per the aforesaid Dismissal Order of the Management which is quite proportionate to the nature of his misconduct under clause 26.1.1 of the Certified Standing Order of the Company.

Having gone through the materials on the case record, I find that the workman appears to have duly dealt with the circumstances of his sudden illness as the cause of his absence from the duty which was beyond his control. It is also an undeniable fact that the workman had informed the Management of his sudden illness as per his letters dt. 16.09.2006 and 06.03.2007 through the posts (UCP), much prior to the chargesheet dt. 28.03.2008 (WExt.W.5).In view of the aforesaid facts, the dismissal of the workman seems to be not only harsh but also disproportionate to the nature of the misconduct of absentism.It is liable to set aside.

In result, it is hereby awarded that the action of the Management of Bararee Colliery of M/s. BCCL in dismissing Sri Santosh Rabidas, Ex.M/Loader from the service of the Company as per Order dt.14.3.2011 is quite

unfair and justified. Hence the workman is entitled to reinstate in his services with continuity but without back wages.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1926.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं0. 2, धनबाद के पंचाट (संदर्भ संख्या 316 of 1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल–20012/306/1995–आई. आर. (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 316/1999 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/306/1995 - IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE NO. 316 OF 1999

PARTIES : The General Secretary,
Rastriya Colliery Mazdoor Sangh,
Rajender Path,
Dhanbad.

Vs.

The General
Manager,(Ropeways)
of M/s BCCL, B.B.Camp, Patherdih,
Dhanbad.

Order No. L-20012/306/95-IR (C-I) dt. 26.11.1999

APPEARANCES :

On behalf of the workman/Union : Mr. S. Bose, Representative of the Union/workman

On behalf of the Management : Mr. D. K.Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 29th May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/306/95-IR (C-I) dt. 26.11.1999.

SCHEDULE

"Whether the action of the Management of Jealgora Ropeways of M/s. BCCL in denial of employment to the dependant son of Sri Dinbandhu Biswas, Electrician is justified? If not, to what relief the concerned workman is entitled?"

On receipt of the Order No L-20012/306/95-IR (C-I) dt.26.11.1999 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 316 of 1999 was registered on 08.12.1999 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/Advocates appeared in, and contested the case.

2. The case of the sponsoring Union as stated in the written statement dt.24th August, 2001 for petitioner Hiru Gopal Biswas is that his father workman Dinbandhu Biswas as Electrician was a permanent employee of Ropeways under the Coal Board of the Central Government since 3.10.1967, and the said establishment was taken over by M/s. Bharat Coking Coal Ltd., which introduced their Service Rules for the employees of the Ropeways including the workman concened.According to the clause 9.4.3. of the NCWA-IV a workman could ask for employment of his/her own one dependent on ground of medical unfitness. The workman had become seriously indisposed in early 1991, so he applied for medical check up by the Management's Medical Board. The Local Management as per the letter dt.15th Feb., 1991 for referred/forwarded his case with all his relevant records to the Apex Medical Board for the purpose. The workman was bedridden. At

last, the Personnel Manager, the Ropeways Division as per the letter dt.2/3.8.91 informed the workman to appear before the Apex Medical Board at Jealgora Central Hospital on 7th August,1991. Upon the medical examination, the Medical Board declared the workman unfit on 07.08.1991 for his original job due to I.H.D. whereas his retirement was due in Dec.1992. The workman had submitted all his documents for employment of his eldest son Hiru Gopal Biswas as his dependent son under the said provisions of the NCWA-IV. But the Management had though duly processed for it, yet not issued any order for employment. Hence, the Union raised the Industrial dispute on 6.12.1993. Unfortunately, the workman throughout bedridden breathed his last on 1.10.1991. The act of the management most inhumanely was violative of the said provision of Social justice. It was alleged on behalf the workman for employment of his dependent son in accordance with the said provisions of the NCWA-IV.

The Union in its rejoinder has categorically denied the allegations of the O.P./Management, and stated that the workman was too indisposed to work for the job during the tenure of his employment much prior to his superannution. He was not paid any wages or emoluments in the event of his incapacity to perform his normal duty due to acute illness.

3. Whereas specially denying the allegations of the workman, the contra pleaded case of the O.P./Management is that the reference being vague is not legally maintainable. The workman was a permanent employee of the Ropeways Division, working as Electrician. He worked for his full tenure of service till his superannuation on 29.12.1991, havng got his full wages etc.The NCWA has no provision for employment of the dependent of an employee in case of his retirement from service. For the reason, the Ministry of Labour, Government of India, as per the Order No.L-20012/306/95-IR(C-I) dt.20.11.1996 had not considered the dispute for reference. The dependent son of the workman is clearly not entitled to employment. The NCWA provides for employment of dependent in case an employee loses his employment or forced to leave his employment for Medical ground prematurely. On reference of the workman for his certain ailments, the Medical Board declared him unfit for his original job on 14.9.1991. The employers retained him in service by offering him a light job in his existing wages etc without any curtailment till his retirement. The application for employment of the dependent was rejected for the valid reasons. So the action of the Management as mentioned in Schedule to the reference is justified. The petitioner concerned is not entitled tom any relief.

FINDING WITH REASONS

4. In this case, since the petitioner Hiru Gopal Biswas, the eldest son of deceased workman Dinabandhu Biswas, expired on 01.05.2002 (Ext.W.6) during the pendency of the reference, Sri Ganesh Gopal Biswas, the second son of the workman, has been substituted in his place as per the Order No.50 dt.24.01.2013 of the Tribuinal. Thereafter, only WWI Ganesh Gopal Biswas has been examined on behalf of the Union concerned, and cross examined by the O.P./ Management. But at the declination of Mr. D.K.Verma, the Ld. Advocate for the O.P./Management to adduce evidence despite ample opportunity, the evidence of the O.P./Management was closed on 8.8.2013, resulting in coming up for hearing the final argument of both the parties.

Mr. Shankar Bose, the Vice President as the Union Representative for the petitioner (Substituted) as per his written argument has to submit that Ex-workman Dinabandhu Biswas was a permanent employee as Electrician Cat.VI (His Service Excerpt - Ext.W.3) of the M/s. BCCL Managment, but consequent upon the medical examination of the workman by the Medical Board of the Management following his reference to it as per the letter dt. 2/3.8.1991 (Ext.W.1), he was declared UNFIT for his original job due to I.H.D. (Inf Ischemi /infarction) as per the Medical report dt.7.8.1991 and the letter dt.8/14.9.1991 of the Management (Extt.W.2 and 3 respectively),whereas his retirement was due in Dec.1992, so he had applied to the Management for providing employment to his dependant son in the terms of the provision under clause 9.4.3. of the National Coal Wage Agreement (NCWA)-IV; and lastly the employment of his dependant was though approved by the letter dt. 27/28.5.1992 of the Management, with the advice to arrange for submission for the claim of his dependant employment. But the fact of the approval is neither pleaded in the written statement of the petitioner nor brought to proof, so it is untenable. The petitioner has no proof of the fact on the case record whether he or his deceased had submitted all the forms with the requisites for his employment, if approved so.

Besides, the plea of the Union Representative for the petitioner is that during the pendency of the Industrial Dispute, the workman concerned expired on 1.10.1999 as per his death Certificate (Ext.W.4), so the petitioner concerned is entitled to his employment under the said provision of the NCWA-IV.

Whereas Mr. D.K. Verma, Learned Counsel for the O.P./ Management has contended that it is the clear cut admission of WWI Ganesh Gopal Biswas, the present substituted petitioner as the second son of the Ex-wkkman, that the reference was filed after the retirement of the workman, so there is no death in harness; as such the petitioner is not entitled to any relief.

5. On the perusal and consideration of the materials available on the case record, I find that the adjudication vitally depends upon the decisive factor whether the reference for employment was filed after the retirement of the workman. The perusal of the Order of the reference dt 26.11.1999 itself vividly indicates initially its rejection as per the Ministry's letter dt.20.11.1996 but later on its

reference as per the direction of the Hon'ble Patna High Court at Ranchi Bench in the Writ of the workman. Whereas the present petitioner Ganesh Gopal Biswas's explicit admission is that his father was given light duty after his medically unfitness having been declared by the Medical Board of the Management for his original job, and he retired on 29.12.1991 at 60 years of his age.

All these facts clearly prove the reference for employment was filed after retirement of the Ex-workman, resulting no employer-employee relationship between the both of them. So no question arises for employment of the petitioner concerned under the said provision of the NCWA-IV.

In result, it is, in the terms of the reference, hereby responded and accordingly awarded that the action of the Management of Jealgora Ropeways of M/s. BCCL in denial of employment to the dependent son of Late Dinbandhu Biswas, Electrician is quite justified and legal. So no question of any relief to the deceased workman or his dependent son arises.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1927.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 31/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल. 20012/367/1999—आई. आर. (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/367/1999 - IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 31 OF 2000

PARTIES : Mr. D. Mukherjee,
Secretary, Bihar Colliery Kamgar Union,
Hirapur, Jharnapara, Dhanbad
Vs. Project Officer,
Bhowra (S), Colliery of M/s BCCL,
PO: Bhowra, Dhanbad.

Ministry's Order No. L-20012/367/99-IR (C-I) dt. 2.2.2000.

APPEARANCES :

On behalf of the workman/ Union : Mr. D. Mukherjee, Ld. Advocate

On behalf of the Management : Mr. U. N. Lal, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 9th May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/367/99-IR (C-I) dt. 2.2.2000.

SCHEDULE

"Whether the action of the Management of Bhowra (South) Colliery of M/s BCCL in dismissing Shri Braj Mohan Ojha from the services of the Company. w.e.f. 16.10.1997 is justified? If not, to what relief the workman is entitled?"

On receipt of the Order No L-20012/367/99-IR (C-I) dt.2.2.2000 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 31 of 2000 was registered on 1st March,2000 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/Advocates appeared in, and contested the case.

2. The case of workman Braj Mohan Ojha as sponsored by the Union concerned is that he had been spotlessly working as a permanent General Mazdoor at Bhowra (South) Colliery. He was issued a false and frivolous chargesheet dt. 24.5.1997 by an unauthorized person for his alleged absence from duty w.e.f. 7.4.1997. Due to his

serious illness, he had got absence, of which the Management was informed several times by registered post with prayer to sanction leave which was ever unrejected by the Management. The reason of his absence from duty was within the knowledge of the Management until the false chargesheet having been issued by the anti-labour Management. The allegation did not constitute any misconduct against him. Yet he was illegally and arbitrarily dismissed by the Management w.e.f. 16.10.1997 on the basis of invalid enquiry in which the charges were unproved. The workman challenged it, but of no effect. Finally, the industrial dispute was raised by the Union before the ALC (C), Dhanbad, but its conciliation failed, resulting in the reference for an adjudication. The action of the Management in dismissing the workman is illegal and unjustified.

3. In rejoinder, the Union has categorically denied the allegations of the O.P./Mangement,and stated that despite being well aware of the workman's serious illness, the Management unfortunately could not take any step for his proper treatment; he had to get treated by the Private Doctor under compelling circumstances of his deteriorated physical condition. Though he had submitted his satisfactory reply to the alleged chargesheet, the Management got enquired by the biased Enquiry Officer after constituting the invalid departmental enquiry. The said Enquiry Officer by conducting the enquiry contrary to the principles of natural justice held the workman guilty based on the illegal and fabricated documents of the Management. The workman was too seriously ill to attend his duty. He had never got any warning letter. His illegal dismissal was too harsh and disproportionate to the alleged quilt. Thus, it has been urged for his reinstatement service with full back wages.

4. Whereas the contra case of the O.P./Employers with categorical denials is that workman Braj Mohan, the General Mazdoor at Bhowra (S) Colliery, was issued the chargesheet dt.24.5.1997 for misconduct of his unauthorized absence w.e.f. 8.4.1997 under clause 26.1.1. of the Certified Standing Order of the Company. On finding the reply of the workman unsatisfactory, as per the Office Order dt.14.7.1997, the Enquiry Officer and the Presenting Officer were appointed. The enquiry was fairly conducted, giving him reasonable opportunity for his defence. He had declined to keep his co-worker. Though the Management witness was examined in his presence, the workman declined to cross-examine him. The Management witness had put forward the past attendance of the workman 138.5,96, and 39 days in the year 1995 to 1996 respectively in his statement, for which two chargesheets and warning letters allowing to resume his duty were issued 12 times as stated in the written statement. Even then he did not improve himself. He was appointed on 10.1.1988 and on transfer he had joined Bhowra (S) Colliery on 15.3.1995.The misconduct of the habitual absentism was established against the workman, who had accepted his guilt/misconduct even in course of the enquiry proceeding. Hence the Disciplinary Authority after going through the enquiry report issued Second Show Cause as per letter dt.2.10.1997 and had imposed on him the penalty of dismissal as per letter dt.16.10.1997 on proved misconduct against him. So the action of the Management is just fair and proper.

5. Categorically denying all the allegations of the workman, it has been stated on behalf of the O.P./ Management that no application with Medical treatment papers and Fitness Certificate was submitted before the Controlling Authority. The Chargesheet was issued by the Competent Authority as per the Annexure 'A' of the Certified Standing Order. The workman is not entitled to reinstatement or any relief. The O.P./Management has sought permission for substantiating the charges, in case the enquiry was found unfair.

FINDING WITH REASONS

6. Consequent upon the examination of MWI Ram Janam Singh, Retd. Personnel Manager, Kustore, Dhanbad, at preliminary point for the O.P./Management, in course of production of any witness of the workman at the preliminary point, Mr.D.Mukherrjee, learned Counsel for the Union/workman as per his written application dt. 24.7.13 accepted the fairness of the enquiry. It has resulted in hearing for final argument of both the parties on merits.

The argument of Mr.D.Mukherjee, Learned Counsel for the Union/workman is that the allegation in the chargesheet is neither for habitual absence nor a misconduct of it as per the Certified Standing Order of the Company nor any evidence supportive to it, so on this score, the chargesheet, and dismissal is prima facie illegal and void. Mr.Mukherjee has drawn my attention to the Authority. In the case of M/s Glaxo Laboratories (I) Ltd.Vs.Presiding Officer, Meerut, reported in 1983 LAB.I.C. 1909(SC)(C.B.)(D) wherein in reference to Industrial dispute Act (14 of 1947), Sch.II Item 6, it has been held some misconduct neither defined nor enumerated in the relevant Standing Order and which may be believed by the employer to be misconduct ex post facto would not expose the workman to a penalty (Para 23). According to Mr. Mukherjee, the workman in course of the departmental enquiry is alleged to have justified the reasons of absence for his illness, of which the Management was informed, but the Management has failed to discharge its onus of proof about the habitual absence of the workman without sufficient cause; so the dismissal of the workman based on unreasonable findings of the Enquiry Officer, the same by the Project Officer devoid of any power is illegal, as also without prior show cause notice to him, as such the workman is entitled to reinstatement with full back wages.

Whereas the contra plea of Mr.U.N.Lal, the Learned Advocate for the O.P./Management is that keeping in view

the proved misconduct of absentism of the workman as in the past and after due second Show Cause to him, the Disciplinary Authority appears to have rightly awarded him with the punishment of dismissal which is just fair and reasonable.

7. After meticulous study of the materials as made available by both the parties on the case record, it stands clear that the misconduct of unauthorized absentism w.e.f. 7.4.1997 to 01.08.1997 as defined under clause 26.1.1. of the Certified Standing Orders of the Company has been factually substantiated against the workman, who appears to have accepted his absence by implication, but he has no proof of any information of his illness to the Management or of his treatment on the enquiry proceeding. Here is the misconduct of his willful absentism as also habitual one enumerated in the Standing Orders. There is no proof of any second Show Notice by the O.P./ Management workman prior to imposing upon him the severe punishment of dismissal as per the letter dt.16.10.1997 (Ext.M.1/7) merely based on his past record. The dismissal appears to be harsh in view of his present absentism. It is liable to be set aside.

In result, it is hereby awarded that the action of the Management of Bhowra (South) Colliery of BCCL in dismissing Shri Braj Mohan Ojha from the service of the Company w.e.f. 16.10.1997 is unjustified and illegal. The workman is entitled to reinstatement in his service without back wages. The O.P./Management is directed to implement it within one month from the receipt of the Award following its publication in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 186/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल. 20012/345/2000—आई. आर. (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1928.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 186/2000 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/345/2000 - IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act,1947.

REFERENCE No. 186 OF 2000

PARTIES : The Secretary,
Bihar Colliery Kamgar Union,
Hirapur, Dhanbad
Vs. General Manager, Moonidih Area of
M/s BCCL, PO : Monidih, Dhanbad

Ministry's Order No.L-20012/345/2000(C-I) dt.29.11.2000

APPEARANCES :

On behalf of the workman/ Union : Mr. D. Mukherjee, Ld.Advocate

On behalf of the Management : Mr. D. K. Verma Ld.Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 30th May, 2014.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/345/2000(C-I) dt. 29.11.2000.

SCHEDULE

"Whether the action of the Management of Moonidih Washery of M/s. BCCL in not regularizing Sri P.K.Banerjee & 30 other workmen as mentioned in Annexure as Time Rated workers and not paying them Piece Rate Allowance is legal and justified? If not, what relief the concerned workmen are entitled to?"

On receipt of the Order No.L-20012/345/2000(C-I) dt.29.11.2000 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 186-2000 of was registered on 22.12.2000 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order,

notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Advocates appeared in, and contested the case.

2. The case of workmen P.K.Banerjee & 30 others as per the list as sponsored by the Bihar Colliery Kamgar Union, Hirapur, Dhanbad, is that they were originally appointed as Piece-Rated workers, but they have been working in time rated job as permanent time Rated workmen since long against permanent vacancy (as shown in Annexure 'W' to their written statement) as per direction of the Management, by putting in more than 240 days attendance in their respective Time-rated jobs continuously. They had represented before the Management several times for their regularization in the respective time rated jobs with protection of group wages, but without any effect. The payment of piece rated allowance to the workmen was also stopped by violating the mandatory provision of Sec.-9A of the Industrial Dispute Act. The action of the Management in not regularizing the workmen is anti labour, illegal and unjustified. After ending all efforts for amicable settlement, the Industrial Dispute raised by the Union before the ALC(C), Dhanbad due to its failure in conciliation resulted on in the reference for an adjudication.

Not any rejoinder filed on behalf of the Union concerned for the workmen.

3. On the other hand, with categorical denials, the contra case of the O.P./Management is that the instant reference being vague is unmaintainable in law and facts, as it was raised by the Union in the year 1999. Moreover, the Annexure (to the Written Statement for the workmen) does not mention the personal number of any of the workmen, the actual job performed by them, the date thereof and the category of their performance. The Management had submitted their written comments before the Conciliation Officer that the Union did not mention which of the workmen were appointed as Piece rated workmen in which Group- A. Piece Rated workmen is always in Group-I, and gets the wages according to the work done by him in a particular group. Whenever no job exists for Piece Rated workmen, the Management deploy them in alternative job as per the need. There is a total ban on conversion of Piece Rated workmen into Time Rated Category. The Time Rated Category has six categories I to VI, and workmen are used to be deployed in different categories as per the Cadre Scheme of the different cadres on the recommendation of the Departmental Promotion Committee by the Cadre Controlling Authority. Unskilled workers are deployed in the initial basis of Category-I Mazdoor and Category I workmen are selected for Category-II on their Trade Test. The Piece Rated Allowance is not recognized by the NCWA, so the demand of the Union for payment of Piece Rated Allowance is not only vague and violative of the Cadre Scheme formulated by the JBCCI but also beyond the scope of NCWA.

4. The Management in the rejoinder has specifically denied the allegations of the Union/workmen and stated that the workmen concerned never made any demand before the Management, which was not furnished with specific information by the Union, so the conciliation had failed in the Industrial Dispute Tribunal.

Since there is no component like Piece Rated Allowance in NCWA, the question of issuing any notice under Section 9-A of the Industrial Dispute Act, 1947 does not rise; thus, the workmen are not entitled to any relief.

FINDING WITH REASONS

5. In this case, WWI P.K.Banerjee, one of the workmen deposing for all of them on behalf of the Union, and MWI Dr.K.S.Sinha, the Dy. Manager (Pers.) for the O.P./ Management have been respectively examined.

Mr. D. Mukherjee, the Learned Counsel for the Union/ workmen as per his written argument submits that these workmen had been receiving Group VA Wages (Which indisputably comes under other Piece- Rated workers than those of the Grouping under clause 5.1.1. of NCWA-II) and Piece Rated allowance for their working as Piece Rated workers since long, but they began working in different time rated jobs since as per Annexure to their Written statement, working different Time-Rated jobs since 1981 as per direction of the Management, but the Management regularized them in time rated job in the year 2000, paying them the initial basic wage of Category I workers, without protecting their Group VA wages, and stopping the payment of Piece Rated allowance for the year 1991, the date of their engagement in time-rated jobs. Further contended by Mr.Mukherjee is that the Management has designated them time rated workers since the year 2002 as disposed by WWI Sr.P.K.Banerjee one of the workmen. But all the years 1981, 1991 and 2002 appears to be beyond their pleding, though he (WWI) has accepted their conversion into Time Rated Category-I as per the Office Order dtt.7/8.11.2002 and 22/23.12.2000 (Ext. W and W.1 respectively), and their alleged two representations (Ext.2 and 2/1), out of which first is of Sri Rit Lal Rawani, one of the workmen, but second relates to punishment of stoppage of two SPRA to one Binod Handi, TRM Group-I, who is not workmen. Mr Mukherjee has underlined the admission of MWI that base protection is given to the Piece Rated workers on their conversion into Time rated worker. But the same management witness appears to have affirmed that their wages were fixed as per norms of fixation at the relevant time.

The emphatic argument of Mr.Mukherjee is that the workmen are entitled for respective Time Rated Category from the year 1982 with Piece Rated allowance till their conversion in time Rated job, namely, protection of Piece

Rated Gr. VA along with arrear of wages and attendance benefits, as the provision of NCWA which is a settlement, is legally binding upon the Management and workmen as held in the case of Mohan Mahato CCL Ltd., 2007(115) F.L.R..427, as per the NCWA in Coal Industry, a workman is entitled to Category I and wage as per actual job. According to Mr. Mukherjee, no employer under Sec.9 A of I.D.Act,1947 can effect any change in the condition of service mentioned in the IV Schedule to the Act related to the wage including the period and mode of payment and compensatory and other allowances; but the Management reduced the basic wage, and stopped the payment of Piece Rated Allowance contrary to the aforesaid mandatory provision, whereas scale cannot reduced without giving employee an opportunity to be heard even when there was a mistake in the order of fixing scale as held in the case of Divisional Supdt.,Eastern Railway Vs. L.N.Keshiri reported in S.C.L.J.(II) 1974 at page 367 just as held in the case of Indian Overseas Bank Vs. their workmen reported in S.C.L.J.Vol(.III) at page 2183 that key allowances given to the Cashier of the Bank is though not included in the Desai Award yet being accepted by the Bank as a gesture of goodwill it became terms & conditions of service of Cashier, so notice for change under Sec. 9, .3.A of the said I.D. Act necessary for stoppage of key allowance; so key allowance was held to be payable until it was stopped in accordance with Law.

6. On the other side, vehemently opposing to the aforesaid argument of Mr. Mukherjee, Mr. D. K. Verma, Ld. Advocate for the O.P./Management contends that in the instant case no documents have been proved by the workmen at the point of their status they were working in and the time of their conversion into Time Rated workers; as the Time Rated workers come under the Cat.I; so far as the demand of the workmen for Piece Rated allowance is concerned, no NCWA provides any such allowance to Piece rated workers in the Coal Industries; moreover this case has no proof of payment or stoppage of any Piece rated allowance to any of the workmen; in that aspect of the instant case, none of the aforesaid rulings holds good with the present case under adjudication.

After hearing the argument of both the Ld.Counsels for the respective points concerned I have perused and found the facts as under:

(i) As per the Office Order dt.22/23.12.2000 (Ext.W1/1), out of the total 31 workmen as per the Annexure to the Reference, only 13 workers as named under its Sl.Nos. 5 to 9, 11, 13, 15, 25, 27, 28, & 31 have been regularized in Time Rated Cat.I with the fixation of their pay as per their terms and conditions as per the rules of the Company. Whereas as per Managements' letter dt.7/8.11.2002 (Extts. W.I =MN-I), only seven workmen as named under Sl.Nos. 1 to 3, 18, 19, 22 & 23 converted in the Time Rated Cat.I on their written consents to have accepted the basic wages of Cat.I, accordingly their fixation of wages was done as per the rule of the Company. Thus, the rest eleven workmen under Sl.Nos have not any such documents concerning their conversion into Time Rated workers.

(ii) So far as the alleged representations of the workmen for their instant demand are concerned, only one workman Rati Lal Rewani appears to have claimed for regularization in Time Rated Cat. I with SPRA as per representation dt.Nil yet under its receipt 23.9.02 (Ext.W.2), but Ext.W.2/1 is the Management's letter dt.9.2.2000 by which one Binod Hari,T.R.M.Gr.I was punished with the stoppage of his SPRA in the complaint case dt.30.08.1988. Aforesaid Binod Hari is not any of the workmen as per the aforesaid Annexure List.

(iii) On conversion of Piece Rated workers into the Time Rated job the NCWA does not provide any Piece Rated allowance, as their wages are fixed as per the rule of the Company.

(iv) Lastly since only 20 workers as per the aforesaid noted in the Serial Nos. of the Annexure have been regularized or converted in the Time Rated Cat-I in the years 2000 & 2002 respectively and accordingly their pay as per their Terms and Conditions appear to have been fixed as per the rule of the Company.

Thus the argument of Mr.Mukherjee, the Learned Counsel for the Union/workmen appears to be quite baseless and untenable. In view of terms of reference, I find the workmen appear to have not made out their own specific case, rather the reference appears to be totally vague and unreasonable. Hence it hereby awarded that the action of the Management of M/s BCCL in not regularizing the workmen P.K.Banerjee & 30 others as per the list of workers in Moonidih Washery into Time Rated from 1981 and not giving them Piece Rated Allowance is quite legal and justified. So none of the workmen is entitled to any relief from any date.

KISHORI RAM, Presiding Officer

ANNEXURE (LIST OF WORKMEN AS PER ORDER OF REFERENCE NO. L-20012/345/2000(C-I) dt.29.11.2000)

1 P. K. Banerjee
2 B. K. Manjhi
3 Ratilal Rawani
4 Somar Mahato
5 Ashish Kumar Bouri
6 Anand Bouri
7 T. P. S. Choudhry
8 Sushila Devi

9 Kalawati Devi
10 Maheshlal Mahato
11 Badal Bouri
12 Subodh Das
13 Hari Pd.Singh
14 Baijnath Mahato
15 Baijnath Rewani
16 Mansa Mahato
17 Shankar Rabidas
18 Luttan Rawani
19 Dinu Manjhi
20 Khodan Mahato
21 Raj Kumar Singh
22 Nandlal Gope
23 Haru Bouri
24 Hardhan Mahato
25 Banamali Mahato
26 Baneshar Mahato
27 Ganesh Mahato
28 Thakur Mahato
29 Gopal Hari
30 Gopal Mahato
31 Rajendar Kumar Singh

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1929.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 45 of 2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल–20012/78/2002–आई. आर. (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/78/2002 - IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947.

REFERENCE NO. 45 OF 2002.

PARTIES : The Working President,
Bihar Lal Jhanda Mazdoor
Union, Bhowra, PO:Bhowra, Dhanbad
Vs. Project Officer,
Jeenagora Colliery of M/s BCCL
PO: Khasjeenagora, Dhanbad

Ministry's Order No. L-20012/78/2002-IR(C-I) dt.24/30.5.2002.

APPEARANCES :

On behalf of the workman/ Union : Mr. S. N. Goswami, Ld. Advocate

On behalf of the Management : Mr. D. K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the15th May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/78/2002-IR(C-I) dt.24/30.5.2002.

SCHEDULE

"Whether the action of the Management of Jeenagora Colliery of M/s BCCL is justified in not promoting Md.Sattar Khan as Sr.Opertor Excavation, Gr. 'A'. If not, what relief the workman concerned is entitled to and from what date?"

On receipt of the Order No. L-20012/78/2002-IR(C-I) dt.24/30.5.2002. of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 45 of 2002 was registered on 17th June, 2002 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own

Representative/Advocates appeared in, and contested the case.

2. The case of workman Md.Sattar Khan as stated in his own written statement is that he, a permanent employee of Jeenagora Colliery at Sulanga O.C.P., Jeenagora of M/s. BCCL, has been working as Dozer Operator Gr.I Group -A from June,1984 since his initial appointment as H.E.M.M.(T) following his accordingly regularization at Pit No. 3 O.C.P. at Bhowra Colliery, Bhowra. His performance was highly satisfactory and excellent as a devotee as observed for better production while posted at Chandan O.C.P. He has been performing the job assigned accordingly, operating 385 HP/410 HP type Dozer since 1984 , for which he has been paid the Excavation Operator Gr.I Group B wages as per the Office Order Ref.No.5138-58 dt.6.6.1996.Consequent upon his transfer to Jeenagora Sulanga Colliery of M/s BCCL, he has been operating the Dozer KT 1150 C 450 H.P.Capacity. As he had got more than 3 years experiences and other requisites eligible for Gr.I Group B Wages and other benefits since the year 1991, but the Management has given him the same w.e.f. 6.6.1996. As a matter of fact, the Management of Jeenagora Colliery has the Dozer 155 A,H.P. of 355 A H.P. Capacity, and has given the Excavation Gr.I Group A wages to the other Operators operating the 155 A HP, ensuring other operators equally of the same.

Further alleged that the workman is a highly skilled workman of more than 8 years experience in the operation and handling of Crawler/Wheel Type Dozer of not less than 385 HP/414, of which having more than 3 years experience in the next below Grade in Excv. Gr.Group B, knowledge of mechanism of the equipment and maintenance thereof. He possesses a valid license for driving heavy duty vehicles. So he is legally entitled to his next Excv.Gr.I Group-A Wages by virtue of the operation of the said dozer by him. Despite his several representations for his proper Grade, the action of the Management in not promoting him in Sr.Dozer Operator Gr.-I Group A with its wages and other benefits w.e.f. 1996 is unjustified, whereas he is entitled to regularization as per the Office Order Circular No. 703-903 dt.30.03.1988 with different wages as well as the other Operators.

In the rejoinder under the signature of Mr. S. N. Goswami, Ld. Advocate for the workman, it has been specifically denied all the allegations of the O.P./ Mangement, alleging that the Management cannot debar the promotional right of the workman as per the decision of Standard Action Committee of JBCCI about revised grouping, description, nomenclature, job description of Excavation workers, as there has not been conducted any D.P.C. since 1996 his working as Sr. Dozer Operator, but getting Gr.'B' with existing pay scale. He is eligible for up-gradation in Group A Gr-I (Excavation) since having 18 years experience in the operation of the Engine Model of 450 HP more than 3 years, the minimum requirement for it. Other operators junior to him have been provided Group 'A' Gr.I promotion without conducting D.P.C.

4. Whereas with categorical denials, the contra case of the O.P./Management is that the reference is unmaintainable, as the demand of promotion is not an Industrial Dispute within the meaning of Sec.2 (k) of the I.D.Act 1947.The promotion is a prerogative of the Management. The promotion is effected only on the recommendation of the Departmental Promotion Committee as per the Cadre Scheme for the excavation worker for the post of Senior Dozer Operator Group-A as specified therein. The workman is designated as Dozer Operator at the Jeenagora Colliery. He was given Excavation Gr.B from 6.6.1996. He is operating the Dozer D-150 for which he is getting the wages of Excavation Gr. 'B' . He has been rightly placed in the right category as per the requirement of the Cadre Scheme. The Jeenagora colliery has no 385 HP Crawler. The Wheel Type of Dozer is not available there, so there is no requirement of a Sr. Dozer Operator Gr.A at Jeenagora Open Cast Project. The workman is not operating the Dozer of 385 H.P./410 H.P. Class, so the promotion of the workman as Sr.Dozer Operator Gr. 'A' does not arise.

Categorically denying the allegations of the workman in the rejoinder of the O.P./Management, it has been alleged that the promotion in Group 'A' is being done only through the D.P.C. as per the Cadre Scheme subject to the vacancy available in a higher post. The workman is not entitled to any relief.

FINDING WITH REASONS

5. In reference, WWI Md. Sattar Khan, the workman for the Union, and MWI Upendra Buda, the Asstt. Manager (Pers), Jeenagora Colliery for the O.P./ Management have been examined. Mr. S.N. Goswami, Ld. Counsel for the workman has submitted that the workman had been operating Dozer of 450 HP since the year 1984 Bhowara Area Pit No.3 OCP continuously and had got promotion of Excv. Gr.D in the year 1984 and Gr.C in the year 1988, so he was firstly entitled to get promotion of Excv. Gr.D in the year 1992 after three years, but the Management provided him Gr.B in the year 1996; then at Jeenagora OCP in the existing capacity following his transfer from Bhowra OCP, so he is legally entitled to get promotion of Excv.Gr.A in the year 2000 but the Management has deviated from it by providing him SLU upgradation of Gr.A from Gr.B , as the benefit of SLU is not at all promotion, despite having his high skilled qualification for it with more than eight years experience in the operation of wheel Type Dozer of 450 HP and more than three years below the Gr.B since 1996, so he is entitled to get promotion in next Grade -A with the proper wages of it as per the Nomenclature of the job description of Excv. of Sr.Dozer Operator as under I.I.No.16. Further submitted that he has been performing the job of Dozer

Operator 450 HP since 1988 at Bhowra OCP as well as at Jeenagora OCP at transfer, so the action of the Management of M/s. BCCL is not providing him promotion in Sr. Dozer Operator Gr. A is not legal and justified.

6. In response to it, Mr. D.K.Verma, Ld. Advocate for the O.P./Management has contended that in the reference Md. Sattar Khan has claimed for promotion to Operator in Excv. Gr.A, the workman is already in Excv. Gr.B but the promotion next to it holds as per Cadre Scheme through DPC subject to vacancy; though the workman was not promoted to Excv. Gr.A, he was given SLU (Grade Pay) w.e.f. 2005; no rule provides such promotion on the basis of the operation of 385 HP Dozer which is not existent at Jeenagora Colliery; so the case has no merits at all.

7. On perusal and consideration of the materials made available by both the parties on the case record, I find the facts as under:

(i) The workman has fairly accepted his promotion in Gr.B as per the recommendation of DPC as per the office order dt.6.6.1996 of BCCL, Bhowra Area (Ext.W.1).the workman has also accepted the upgradation with SLU for Excv Gr.A w.e.f. 1.1.2005 as per office order dt 24/21. 03.2005 of the BCCL,Jeenagara Colliery (Ext.W.2) despite the representations of the workman dt 9.10.2000 (Ext.W.3),as there was no Machine (Dozer) of 385/41o HP Class at Jeenagora Colliery at the relevant time. Now aforesaid machine/Dozer of the said capacity existent as one of the qualifications for Excavation Grade A has been abolished w.e.f. 31.08.2007 (Ext.M.2- NCWA VII-I.I.NO.21 replacing NCWA IV: - I.I.NO.42 dt.7.5.93); thereafter the workman has been promoted to the Excv.Gr.A w.e.f. 1.11.2011.

In such circumstance, the claim of the workman for promotion Excv.Gr.A since 1999 being inapplicable to Jeenagora colliery appears to be unjustified.

In result, it is hereby in the terms of the reference responded and accordingly awarded that the action of the Management of BCCL Jeenagora colliery in denying the promotion of workman Md. Sattar Khan to the post of Sr.Operator in Excv. Gr.A, is legal and justified at the relevant time, because the workman has no such aforesaid qualification for the operation of the aforesaid Machine at the relevant time, and the Jeenagora Colliery had no such machine of that capavity. Hence the workman is not entitled to any relief from any date, moreover he has got his promotion later on at due time.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 04/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल–20012/84/2006–आई. आर. (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/84/2006 - IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD.

PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act,1947.

REFERENCE No. 04 OF 2007

PARTIES : The Working President,
Janta Mazdoor Sangh, B-25, Murlidih 20/21 Pits, Post- Mohuda Dhanbad

Vs.

General Manager, W.J.Area of M/s. BCCL, Post: Moonidih, Dhanbad.

Ministry's Order No. L-20012/84/06-IR(CM-I) dt. 24.1.2007.

APPEARANCES:

On behalf of the workman/ Union	:	Mr. C. K. Jha, Rep. of the workman
On behalf of the Management :		Mr. D. K. Verma, Ld.Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 8th May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/84/06-IR (CM-I) dt.24.1.2007.

SCHEDULE

"Whether the action of the Management of Bhatdee Colliery, W.J. Area of M/s. BCCL to dismiss Sachin Das from service on 3.12.2003 is legal and justified? If not, to what relief is the concerned workman entitled?"

On receipt of the Order No. L-20012/84/06-IR (CM-I) dt. 24.1.2007 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 04 of 2007 was registered on 20th Feb., 2007 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/Advocates appeared in, and contested the case.

2. The case of the sponsoring Union concerned for workman Sachin Das is that while carrying the basket full of coal to load into the coal tub, as U.G. Loader at Kendra Mine under Lohapatti Colliery of W.J. Area, BCCL on 25.09.1996, the workman due to poor safety Management of M/s BCCL met an accident by falling about 10 M.T. Coal from the roof of the coal seam. He was rushed to the Central Hospital, Dhanbad, and was admitted therein on 26.9.1996 morning, and remained under treatment till 1999.He was too unable to carry the coal basket for loading the coal into the Coal Tub due to his fractured bones of hand, leg and upper thai. On his application with all medical treatment papers to the Addl.General Manager on 24.7.2007 for alternative light job, it was not considered, and he was transferred at Bhatdee Colliery in the year 1999,without payment of injury compensation to him u/s 53 of the Workman Compensation Act 1923 and u/s 46(9) and 49 of the Employees' State Insurance Act 1948. In stead of the relief, the O.P./Management awarded him with punishment of dismissal as per the order dt. 26.11/3.12.2003, alleging unauthorized absentism only from 31.03.2003, and kept him in the forceful idleness from 01.07.2003.Whereas the chargesheet No. 67 dt. 12.01.2000 was given for absent period of 1995, 1996, 1997 and the enquiry report was held on 02.03.2000, despite sending him by the Management for treatment at the Central Hospital, Dhanbad for his major injuries caused by the Mine accident. The workman was on roll of Lohapatti Colliery in the year 1996 to 1999 but the Management has showed his alleged absentism at Bhatdee Colliery. So the domestic enquiry was held improperly and dictatorially hence untenable. Therefore, the workman is entitled to reinstatement with full back wages and consequential benefits admissible at the relevant time.

3. The Union/the workman in his rejoinder has specifically denied all the allegations of the O.P./ Management,and stated that the request of the workman for assessment of his disability and loss by an Apex Medical Board for determining the suitability of his original job or compensation payable to him under the provision of the Workman Compensation Act was not considered by the Management of Lohapatti Colliery of BCCL, rather he was transferred to the Bhatdee Colliery as per the Office Order No. 148 dt. 29.01.2002, by releasing him from the former colliery on 31.01.2002. The workman was piece rated and was accordingly paid the wages for loading coal per tub, and his attendances 'Hazari' or 'Gari' were marked on that basis. In the year 2002 he had loaded 164 Coal /Tubs in 82 days during which despite getting pain in his broken joint collar and heap, he was not allowed for any alternate job. The employment/deployment acts on the ground of sickness and medical treatment. He had submitted his Medical treatment Sick Certificate dt. 31.5.2003 in course of the domestic enquiry related to the chargesheet No.1574 dt. 2.7.2003.The Manager of Bhatdee had also endorsed to Dy. Personnel Manager on the back of the letter for processing to permit him to join his duty. There was no instruction for chargesheet. He was kept in forceful idleness in colorful exercise of the power till he was granted by the Competent Authority to allow him for duty. The domestic enquiry was not fair. His Medical Certificate proves his reasonable absence. As per the Letter No.9254-9304 dt. 28.5.2004 of the Director (Personnel) R.P. Singh, for the BCCL, no dismissal punishment should be awarded in the case of sickness. The dismissal of the workman is illegal and unjustified. The workman is, therefore entitled to relief as deemed fit under the I.D.Act.

4. Whereas with categorical denials of the allegations as irrelevant or incorrect, the contra case of the O.P./ Management is that the present reference is unmaintainable in law or in facts. As the workman began to absent from duty w.e.f. 31.3.2003 unauthorisedly, he was issued the chargesheet dt. 27.2003 for his aforesaid misconduct. He also replied to the chargeshet. Consequent upon the appointment of the Enquiry Officer by the Management for it, the Enquiry Officer conducted the domestic enquiry in accordance with the principle of natural justice in presence of the workman, and submitted his enquiry report, holding him guilty of the charges levelled against him. The Disciplinary Authority issued him the Show-cause Notice, supplying him the copy of the enquiry report. Then the Management had rightly dismissed the workman from the services of the Company for his proved misconduct. The dismissal of the workman is legal and justified, as he had been a habitual absentee as evident from his last four years attendance Nil, 10, 82 and 17 days in the years 2000

to 2003 separately prior to his dismissal. The O.P./ Management has sought permission for substantiating the charges as a preliminary issue, in case the domestic enquiry found unfair. The workman is not entitled to any relief.

FINDING WITH REASONS

5. In the instant reference, after hearing the MWI Akhilash Kumar Chand, the Clerk in the Personnel Department of Bhatdee Colliery at the preliminary issue, but at the declination of the Union Representative for the workman to produce any witness at the issue, the Tribunal as per the Order No. 27 dt. 25.2.2013 held the fairness of the domestic enquiry in accordance with the principle of natural justice. It resulted in hearing the final arugments of both the parties on merits.

Mr. H.C. Jha, the Union Representative for the workman has vociferously argued that though the workman had justified his sick absentism by filing his reply (Ext.M.2) as well as treatment and fitness Certificate(Ext.W.1) after one month on his chargesheet for it without mention of past absentism the alleged enquiry was held, and the workman after keeping in his forceful idleness was illegally dismissed despite the circular/letter No. 2015 dt. 01.09.1994 of the Management forbidding to do so towards the workman absented for a short period, so the dismissal was not justified. In response to it, the contention of Mr. D. K.Verma, the Learned. Counsel for the O.P./ Management is that the workman himself in his statement accepted the charge of his unauthorized absentism from 31.03.to 18.07.2003, and sought an apology for the misconduct under clause 26.1.1. of the certified Standing Orders of the Company, so his dismissal as the letter dt. 26.11.2003 (Ext.M.8) following the Show Cause (Ext.M.9) was legal and justified. Mr. Verma has further submitted that the Award dt.04.03.2013 passed by the Presiding Officer of the CGIT-LC NO. 1, Dhanbad, in Ref. No. 41/ 2009 as its copy filed on behalf of the workman for his case is not binding upon this Tribunal.

6. On the perusal and consideration of the materials made available on the case, it appears that the workman had indisputably got unauthorizedly absented from his duty for three months and seventeen days due to his sickness as the M/Loder,but his dismissal for it as also separately based on his past attendances unaccounted in the instant chargesheet and the enquiry proceeding, seems to be harsher and disproportionate to the nature of his misconduct. It is in no way sustainable legally.

In result, it is, hereby, awarded that the action of the Management of Bhatdee Colliery, W.J. Area of M/s. BCCL to dismiss Shri Sachin Das from service of the Company on 3.12.2003 with immediate effect is illegal and unjustified. Hence, the workman concerned is entitled to reinstatement in service but without back wages. The O.P./Management is directed to implement it within one month from the date of its receipt, following its publication by the Government of India, Ministry of Labour & Employment, New Delhi in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1931.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं0. 2, धनबाद के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल–20012/98/2011–आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/98/2011 - IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD.

PRESENT :

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act.,1947.

REFERENCE No. 25 OF 2012

PARTIES: The Vice President,
Janta Mazdoor Sangh, Vihar Building, Jharia, Dhanbad.

Vs.

The Chief General Manager,
Bastacolla Area of M/s BCCL,
PO: Dhansar, Dhanbad,

Order No. L-20012/98/2011-IR (CM-I) dt. 20.03.2012.

APPEARANCES :

On behalf of the workman/ Union	:	Mr. K. N. Singh, Ld. Advocate
On behalf of the Management	:	Mr. D. K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 21st May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/98/2011-IR (CM-I) dt. 20.03.2012.

SCHEDULE

"Whether the action of the Management of Bastacolla Colliery of M/s. BCCL in dismissing Shri Ram Briccha Singh from the services of the Company vide order dated 20/26.8.2005 is fair and justified? To what relief the workman concerned is entitled to?"

On receipt of the Order No L-20012/98/2011-IR (CM-I) dt. 20.03.2012 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 25 of 2012 was registered on 09.04.2012. and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/Advocates appeared in, and contested the case.

2. The case of workman Ram Briccha Singh as sponsored by the sponsoring Union is that he was a permanent employee as a Shovel Operator of Bastacolla Colliery. He was served with a chargesheet No. 945 dt. 5.4.20005 for alleged unauthorized absence from duty since 07.02.2005. He had submitted in his reply all the reasonable causes and facts of his absence, but unfortunately he was dismissed from service as per the Order dt. 20./26.08.2005 merely on the basis of the enquiry report, without considering his reasonable justification. In fact, he was granted the leave since 07.02.2005 during which he had gone his native place, but he fell ill, for which he remained under treatment till 13.02.2005 at Military Hospital, Jhansi, under the intimation to the management through postal letter under its receipt. The charge sheet without precise nature of misconduct is vague and groundless. He has been wrongly dismissed from service of the company based on perverse findings of the Enquiry Officer. On several representations to the Management, when the Management did not reinstate the workman in service, the Union raised the Industrial dispute before the A.L.C. (C), Dhanbad, but the conciliation proceeding in it failed, resulting in the reference for an adjudication. The action of the Management in dismissing the workman from service is unjustified, so he is entitled for reinstatement with full back wages and benefits.

The Union in the rejoinder for the workman has specifically denied all the allegations of the O.P./ Management, and stated that the charge sheet was never sent by the Management on the permanent address of the workman just as the workman never received it. The Management has wrongly conducted the domestic enquiry into the alleged charge without any information of it to the workman. Just as the Enquiry Officer, has wrongly submitted the report, holding him guilty of the charge as the enquiry was unfair, and improper contrary to the norms of the natural justice.

3. Whereas categorically denying the allegations of the Union/workman, challenging the maintainability of the reference, the case of the O.P./Management is that workman Ram Briccha Singh was not posted at Basatcolla colliery, though he was an employee of the said colliery working as the Shovel Operator. He began to absent from his duty w.e.f. 15.07.2005 unauthorizedly.The Management issued him the charge sheet dt. 18/25.4.2005 for his conduct which was served upon him through registered posts at his present and permanent home addresses. Even after the receipt of the chargesheet, the workman did not reply to it, so the management appointed Sri B. Bandhopadhyay, the then Sr. Personnel Officer of Bastacolla Colliery for domestic enquiry. On the several enquiry notices having issued by the Enquiry Officer for the enquiry on several dates, when the workman did not appear, the Enquiry Officer finding no alternative conducted the ex-parte enquiry, and submitted his report, holding he workman guilty of the charges. The Disciplinary Authority issued him the Second show Cause Notice with the copy of the enquiry report, even then he has not submitted any explanation to it.Thereafter,the Disciplinary Authority dismissed the workman for his proved misconduct. The dismissal is proportionate to the misconduct. It is legal and justified. The enquiry by the enquiry Officer was fair,proper and in accordance with the principle of natural justice. So the workman is not entitled to any relief.

FINDING WITH REASONS

4. In the instant case, Mr. K.N. Singh, Ld. Advocate cum Union Representative for the workman by filing a petition has accepted the fairness of the domestic enquiry at the preliminary point, so the Tribunal as per Order No. 15 dt. 20.11.2013 has held the enquiry accordingly according to the principle of natural justuice.The documents of both the parties as per their respective lists on their consensus have been marked as their respective exhibits for proper appreciation of the main issue of the workman's dismissal as involved in the case.

Mr. K. N. Singh, the Union Representative-cum-Ld. Advocate for the workman has submitted that the

workman was granted leave since 7.2.2005 and had gone to his native place where he fell ill and remained at Military Hospital, Jhansi under treatment for ailment on 13.02.2005 and its intimation was also given to the Management despite the facts the workman was wrongly dismissed for an alleged misconduct of absentism though he has justified it . Whereas Mr. D.K. Verma, the Ld.Advocate for the O.P./ Management contended that the workman was dismissed from his service for his long unauthorized absentism, so his dismissal was quite justified.

5. After hearing the Ld.Counsels for the respective parties and on the perusal of the materials available on the case record, I find following facts:

1. The workman has not any documentary proof of the fact that he had gone home after taking leave from the Management on 07.02.2005;
2. So far as his alleged treatment for his illness is concerned, the photocopies of his treatment (Ext.W.2 series) relate to his treatment by Doctor concerned at Barachhatti (Gaya) and lastly, at Military Hospital, Jhashi on Feb.13, June, 26, August, 07 and September, 15, 2005 respectively for which he had sent his information through Regd. Posts (Ext.W.1) to the Management.
3. As a matter of fact, the workman man appears to have committed the misconduct of prima facie under clause 26.1.1. of the Certified Standing Order of the BCCL for his unauthorized absentism.

After due enquiry ex- parte, he was dismissed from his service in view of his past three years poor attendances as per the letter dt. 20/26.8.2005 of the Management (Ext.M.9). Keeping in view the nature of misconduct of the workman his dismissal by the Management appears to be too harsh.

In result, it is hereby awarded that the action of the Management of Bastacolla of M/s BCCL in dismissing Ram Briccha Singh from the service of the Company as per order dt. 26/28.08.2005 is unfair and unjustified. Hence, the workman is entitled to the relief of his reinstatement in his service but without wages.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1932.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं0. 2, धनबाद के पंचाट (संदर्भ संख्या 30/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल–20012/242/2004–आई. आर. (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/242/2004 - IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 30 OF 2005

PARTIES : The Vice President,
Coal Mines Engineers & Workers Association, At No.19, Bekar Bandh, Dhanbad

Vs.

The General Manager
Sijua Area of M/s BCCL, PO: Sijua, Dhanbad

Order No. L-20012/242/2004-IR(C-I) dt. 24.03.2005.

APPEARANCES :

On behalf of the workman/: Union	Mr. B. B. Pandey, Ld. Advocate
On behalf of the Management :	Mr. D. K. Verma, Ld. Advocate

State : JHARKHAND Industry : Coal

Dated, Dhanbad, the 12th May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/ 242/2004-I.R. (C-I) dt. 24.03.2005.

SCHEDULE

"Whether the action of the Management of Nichitpur Colliery of M/s BCCL in denying the promotion to Shri Ram Nandan Laldev from Mech Fitter Cat. IV to

Cat.V is fair and legal? If not, to what relief is the concerned workman entitled and from what date."

On receipt of the Order No. L20012/242/04-IR(C-I) dt.24.03.2005.of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 30 of 2005 was registered on 26.04. 2005 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/Advocates appeared in, and contested the case.

2. The case of the sponsoring Union from workman Ramnandan Lal Dev is that consequent upon the promotion of the workman from the post of Mechanical. Fitter Helper Cat.II to that of Mechanical fitter Cat.IV he has been working accordingly since 03.10.1998 as per the Office Order dt.12.01.1998 based on the D.P.C Recommendations at Nichitpur Colliery. Though he had stood first out of the 13 participants by securing 93.5.the highest total marks in 3(three) different heads at his appearance before the D.P.C. on 1.12.2003 for his promotion to the post of Mechanical fitter Cat.-V as specified in the Promotional Channel of E.M.Personnel (Mechanical Cat Fitters),to utter surprise, he was not promoted, and Shri Abdul Sattar was illegally promoted from Mechanical Fitter Category-IV to Mechanical fitter Cat-.V w.e.f. 11.12.2004 as per the Office Order dt.21.3.2004.Whereas the workman is a Matriculate and holder of the National Trade Certificate from the I.T.I.Dhanbad,as well as of National Apprentenship Certificate. The list of seniority prepared by the Management is meritless and unjustified. The management by violating and discarding its own rules and principle of promotion has made a hoax. The fair and genuine Trade Union activities of the workman as the Branch President are disliking for the management, so he was become a victim of its unfair labour practice and malafide intenton.The action of the Management in denying his due promotion to Cat-.V is unfair and illegal. He is entitled to it from 11.12.2004 with all the consequential benefits.

3. In the rejoinder of the Learned Counsel for the workman, all the allegations of the O.P./Management have been specifically denied as wrong and misleading. Further stated that the D.P.C. was held on 1.12.2003, but not on 3.12.2003; if seniority is only the basis of the promitoon, what is the use of Cadre Scheme, its criteria, and giving marks under different heads for such selection? Other facts are also considered for such promotion. The Management has dealt with the workman unjustly. Though Shri Abdul Satter may be Senior to him, he had secured only 72 marks only as contrasted with highest marks of the workman. The Management has vindictively ignored his rightful claimed for it.

4. Whereas categorically denying the allegation of the Union Representative for the workman, the O.P./ Management has challenged the preset reference as unmainainable in law and in facts, stating that the Sponsoring Union has no locus standi to raise the Industrial dispute for promotion of any workman, as the matter of promotion of any workman being a managerial function of the Management is not an Industrial dispute within the meaning the Sec. 2K of the I.D. Act,1947. As per the Cadre System, the promotion from one Cat. to other higher one is always subject to fulfillment of eligibility criteria through D.P.C. on the basis of seniority, experience and availability of vacancy. The workman was eligible for consideration in the DPC, so the Management allowed him to participate in the D.P.C. held on 3.12.2003.After the DPC, the committee recommended the name of Shri Abdul Sattar for promotion from Cat-.IV to Cat-.V against the vacancy in order of seniority., so the aforesaid Sattar was given promotion as a Senior to the workman because the promotion is based on seniority.Mr.Abdul Sattar was working as a Fitter in Cat-IV w.e.f. 14.1.1989 after his appointment on 4.9.1972 as contrasted with the appointment of the workman on 1.2.1990 and his working as Cat.IV Fitter w.e.f. 3.10.1998.Moreover the workman is under Sl.No.10 of the Seniority position. The action of the Management is legal and justified. Hence the workman concerned is not entitled to any relief.

5. In its rejoinder, it has been categorically denied the allegations of the workman, stating further that the distribution of total marks was just to assess the qualifying marks for promotion, but the promotion is being effected according to the seniority from amongst the qualified candidates. Promoton of the Sr. Most workman is effected according to the provision and policy of the Company.

FINDING WITH REASONS

6. In the instant Reference, WWI Ramnandan Lal Dev, the workman concerned for the Union, has been examined. At the acceptance of the Union Representative about the admission of the documents of the O.P./Management as proposed by Mr.D.K.Verma,who had submitted that there was no need to adduce any evdene. Accordingly the relevant documents of the O.P./Management related to DPC proceedings have been marked as Extt. M.1 series.

Mr.B.B.Pandey, the Ld.Advocate for the O.P./ Management has submitted that the Management has failed to justify the violation of the rule of the DPC, the workman standing at Sl.No.1 in order of the merits was

byepassed and one Junior Abdul Sattar was promoted to the post of Mechanical fitter Cat-.V on the ground of Seniority only as apparent from the documents of the workman (Extt.W.1 to 5)whereas the workman was entitled to it as per his statement but he was not promoted despite his better qualification and five representations (Ext.5 and 6 series respectively) . So the claim of the workman for his due promotion is quite justified. Whereas the contention of Mr.D.K.Verma, the Ld.Advocate for the O.P./ Management is that though the petitioner has scored the highest marks in his written examination, the Management as per its decision based on the criteria for promotion has rightly allowed the other successful candidate who was very seniority to the workman, for promotion to the single post vacant for Mechanical fitter Cat-V ; as such the action of the Management is quite bonafide and justified.

7. On perusal and consideration of the materials available on the case, it explicitly appears the admission of the workman (WWI) in his very cross examination about the status of Abdul Sattar,the senior most to him and qualified at the same D.P.C. ,so the promotion of Abdual Sattar to the only vacant post of the Mech.Fitter Cat.IV as recommended by the D.P.C as per the proceeding of the promotion (Extt.M.1 series) and the official order dt.31.3.2004 appears to be just and proper. There is not any legal irregularity in it.

In view of the aforesaid crystal clear findings, it is hereby awarded that the action of the Management of Nichitpur Colliery of M/s BCCL in denying promotion to Sri Ram Nandan Laldev from Mech.Fitter Cat.IV to Cat.V at the relevant time is quite fair and legal. Hence the concerned workman is not entitled to any relief in that regard from any date.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जुलाई, 2014

का.आ. 1933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं0. 2, धनबाद के पंचाट (संदर्भ संख्या 115 of 2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था ।

[सं. एल. 20012/94/2005–आई. आर. (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2014

S.O. 1933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 115/2005 of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 01/07/2014.

[No. L-20012/94/2005-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD.

PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947.

REFERENCE NO . 115 OF 2005

PARTIES : The Working President,
Bihar Mines Lal Jhanda Mazdoor Union,
At/PO: Bhowra, Distt:Dhanbad,

Vs.

The General Manager,
E. J. Area of M/s BCCL, PO: Bhowra,
Dhanbad,

Order No. L-20012/94/05-IR(C-I)
dt.19.12.2005.

APPEARANCES :

On behalf of the workman/ Union	:	Mr.Raghunandan Rai, Union Representative
On behalf of the Management	:	Mr. U. N. Lal, Ld.Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 28th May, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/94/05-IR(C-I) dt.19.12.2005.

SCHEDULE

"Whether the demand of Bihar Mines Lal Jhanda Mazdoor Union from the management of BCCL, E.J.Bhowra Area that Sh.Parishit Roy dependent son of Late Aklu Roy, workman may be given employment on compassionate ground justified ? If so, to what relief the said dependent entitled?

On receipt of the Order No. L-20012/94/05-IR(C-I) dt.19.12.2005 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 115 of 2005 was registered on 30.12.2005 and

accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Representative/Advocates appeared in, and contested the case.

2. The case the sponsoring Union for petitioner Parishit Roy is that ex-workman Aklu Roy was a working employee at O.B.R, Bhowra (North), Chandan O.C.P. of M/s BCCL in the East Jharia Area. On 10th Jan, 1990,Aklu Roy was admitted in the BCCL Central Hospital, Dhanbad, for treatment of his illness, he died on the same day as per his Death certificate No.283 dt.same.After his death, his wife Smt.Sarala Roy applied to the Management for her employment, she could not get employment because of her ailment in her eye found on her medical examination by the Medical Board organized by the Management. Then,Parshit Roy, the petitioner, as the son of the deceased workman applied to the Management for his employment in place of his father, and as per the office letter dt.19.1.1997 of the Personnel Manager, Bhowra O.CP ,he was medically examined at the BCCL Regional Hospital,Jealgora,yet the O.P./Management provided none of them any employment on compassionate ground in accordance with the provision of the NCWA-4,though the petitioner had kept on requesting the Management as per his application dt. 6.7.2001 (Under receipt of its carbon copy) to the Project Officer concened.He has right to employment on compassionate ground under the said provision of the NCWA-4.Hence, the Industrial Dispute for it has been raised against the O.P./Management, urging for an Award to that effect.

The Union in its rejoinder for the petitioner has specifically denied, and stated that as per clause 9.4.3 of the NCWA-IV maximum age limit is prescribed upto 45 years, but it has no such limitation for the employment of the dependant; employment is practically being given to the minor dependant on his majority, without giving any importance to the age of the dependant at the death time of the workman. It is also alleged that the Management treats the age of the dependant on the date of employment, but not on the date of the workman's death.

3. Whereas Categorically denying the allegations of the union, the contra case of the Management as also represented before the ALC©,Dhanbad-III, is that Late Aklu Roy,Ex-OBR,was a permanent employee of Bhowra (N) Colliery-Chandan O.C.P.He died at the Central Hospital, Dhanbad,on 10.01.1990 during his service period (Ext.W.1). After his death his wife Smt.Sarla Roy had applied for her employment vice his deceased husband, but she was found medically unfit for the employment as also intimated by the letter No.1047 dt.15.4.91;thereafter, the claim for the employment to petitioner Parishit Roy was regretted, as he was a minor aged only 09 years at the time of death of his deceased father. The wife of Late Aklu Roy was not eligible to get monetary benefits, as the monetary scheme was not in vogue at the death time of the deceased workman as also intimated to the claimant. The same stand was taken before the Conciliation Officer, the industrial dispute in lack of conciliation failed resulting in the reference. So the demand of the Union for employment of petitioner Parishit Roy is not fair, and justified, as the provisions of the NCWA prevalent at the death-time of the deceased employee did not cover the case.

FINDING WITH REASONS

4. In the instant case,WWI Parishjt Roy,the petitioner himself ,and WW2 Sarala Roy ,the son and the widow/ wife of the deceased workman Aklu Roy, respectively on behalf of the Union, and MWI Rahul Kr.Mandal,the Asstt.Manager (Pers.),Bhowra (S)/OCP for the O.P./ Management have been respectively examined.

Mr. Raghunandan Rai, the Union Representative for the petitioner as per his written argument has submitted that the O.P./Management as per their alleged official letter dt.16.12.2001 beyond the knowledge of the petitioner has failed to prove the fact that petitioner Parishit Roy the son of the deceased workman, was juvenile at the death time of the latter, whereas as WW2 Sarala Roy, the mother of the petitioner has evidently stated the age of the petitioner as about 13 years old at the death time of his father; moreover the NCWA- IV provides nowhere for the fact that the petitioner must be adult at the time of the death of the workman concerned, so the petitioner is entitled to employment on compassionate ground.

5. Just contrary to it,Mr.U.N.Lal,the Learned Counsel for the O.P./Management, has contended that after the death of deceased workman Aklu Roy in harness on 10.01.1990,his wife Smt.Sarala Roy had applied for her employment vice her deceased husband, but as per the Management's Office Letters dt.15.4.1991and 15/16.11.2001 (Extt.M.1 and 1/1 respectively)she was medically found unfit by the Medical Board; after much later petitioner Parishit Roy claimed for his employment as the son of the deceased workman, it was also regretted on his being minor aged only 9(nine)years at the time of his father's death as per the office letter dt.15/16.11.2001 (Ext.M.1/1)),so the claim of the petitioner for his employment is not justified in view of the NCWA-IV prevalent at the relevant time.

6. Having gone through the materials, oral and documentary, of both the parties available on the case record, it appears that the death of deceased workman

Aklu Roy in harness on 10.01.1990 is indisputable just as regretting the employment of his wife Smt.Sarala Devi on the ground of her medically unfit due to her total blindness. So far as the employment matter of the petitioner as claimed under clause 9.4.2. of the N.C.W.A -IV is concerned, the O.P./Management after consideration of the petitioner's claim for his employment appears to have rightly regretted, as he on his medical examination (as called for as per the letter dt.19.1.1997-Ext.W.2) was found a minor aged only 9 (nine) years old at the time of his father's death as per the Office letter 15/16.11.2001 (Ext.M.1/1).The provision under the clause 9.4.2. applicable to this case in view of the death of the workman does not provide for employment of a dependent, minor at the relevant time, rather its clause (ii) provision of the said clause presupposes ' physically fit and suitable for employment of the dependant not more than 35 years'.It undoubtedly but impliedly implies that the petitioner was factually not an adult for employment vice his father at the time of his death in harness.

In result, it is, in the terms of the reference, hereby responded, and accordingly awarded that the demand of the Bihar Mines Lal Jhanda Mazdoor Union from the Management of BCCL, E.J .Bhowra Area, for the employment of petitioner Parishit Roy, dependant son of Late workman Aklu Roy, on compassionate ground is totally unjustified as baseless.Hence, the dependant/ petitioner is no entitled to any relief.

KISHORI RAM, Presiding Officer

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